



भारत का राजपत्र The Gazette of India

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सं. 21] नई दिल्ली, शनिवार, मई 21, 1994/वैशाख 31, 1916
No. 21] NEW DELHI, SATURDAY, MAY 21, 1994/VAISAKHA 31, 1916

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II)
PART II—Section 3—Sub-Section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएँ
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than
the Ministry of Defence)

विधि, न्याय और कम्पनी कार्य मंत्रालय
(विधि कार्य विभाग)
(न्यायिक खंड)
सूचना

MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS
(Department of Legal Affairs)

(Judicial Section)

NOTICE

नई दिल्ली, 28 मार्च, 1994

New Delhi, the 28th March, 1994

का.आ. 1158.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री सतीश कुमार राय, एडवोकेट के उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उससे गंगा नगर कालोनी, बनारस (उ.प्र.) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5 (39)/94-न्यायिक]
पी. सी. कण्णन, सक्षम प्राधिकारी

S.O. 1158 — Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Rules, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Sh. Satish Kumar Rai, Advocate for appointed as a Notary to practise in Ganga Nagar Colony Varanasi (U.P.).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[F. No. 5(39)/94-Judl.]
P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 28 मार्च, 1994

का.आ. 1159.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री रविन्द्र कुमार सिंह, एडवोकेट के उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे अम्बाला सिटी (हरियाणा राज्य) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाए।

[सं. 5 (41)/94-न्यायिक]
पी. सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 28th March, 1994

S.O. 1159.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Rules, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Sh. Ravindra Kumar Singh, Advocate for appointment as a Notary to practise in Ambala City (Haryana).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[F. No. 5(41)/94-Judl.]
P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 8 अप्रैल, 1994

का. आ. 1160.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री जी. एम. उथाप्पा, एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे मेडीकेरी, कोडागू (कर्नाटक राज्य) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5 (42)/94-न्यायिक]
पी. सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 8th April, 1994

S.O. 1160.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Rules, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Sh. P. M. Uthappa, Advocate for appointment as a Notary to practise in Medikeri, Kodagu (Karnataka).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[F. No. 5(42)/94-Judl.]
P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 8 अप्रैल, 1994

का.आ. 1161.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री दीपांकर दास, एडवोकेट के उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे सुप्रीम कोर्ट कम्पाउण्ड, नई दिल्ली में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5 (44)/94-न्यायिक]
पी. सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 8th April, 1994

S.O. 1161.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Rules, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Sh. Dipankar Das, Advocate for appointment as a Notary to practise in Supreme Court Compound, New Delhi.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[F. No. 5(44)/94-Judl.]
P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 8 अप्रैल, 1994

का. आ. 1162.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री मोहन लाल, एडवोकेट के उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे डिस्ट्रिक्ट कोर्ट, यमुना नगर, जगाधरी (हरियाणा) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5 (46)/94-न्यायिक]
पी. सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 8th April, 1994

S.O. 1162.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Rules, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Sh. Mohan Lal, Advocate for appointment as a Notary to practise in Distt. Courts, Yamuna Nagar at Jagadhri (Haryana).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[F. No. 5(46)/94-Judl.]
P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 8 अप्रैल, 1994

का. आ. 1163:—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री लाला राम वर्मा, एडवोकेट के उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे पटियाला हाउस कोर्ट में (दिल्ली) व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5 (28)/94-न्यायिक]

पी. सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 8th April, 1994

S.O. 1163.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Rules, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Sh. Lala Ram Varma, Advocate for appointment as a Notary to practise in Patiala House Courts, New Delhi.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[F. No. 5(28)/94-Judl.]

P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 19 अप्रैल, 1994

का. आ. 1164:—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री रमेश चन्द्र भार्गव, एडवोकेट के उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे डिस्ट्रिक्ट कोर्ट काम्प्लेक्स शाहदरा, कडकडूसा, दिल्ली में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5 (48)/94-न्यायिक]

पी. सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 19th April, 1994

S.O. 1164.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Rules, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Sh. Ramesh Chandra Bhargav, Advocate for appointment as a Notary to practise in Distt. Courts Complex, Shahadara, Kurkardooma, Delhi.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[F. No. 5(48)/94-Judl.]

P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 27 अप्रैल, 1994

का. आ. 1165:—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री संदीप कुमार डे, एडवोकेट के उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे अलीपोर कोर्ट, जिला 24 परगना (पश्चिम बंगाल) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5 (57)/94-न्यायिक]

पी. सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 27th April, 1994

S.O. 1165.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Rules, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Sandip Dey, Advocate for appointment as a Notary to practise in Alipore Court Distt. 24 Parganas (West Bengal).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[F. No. 5(57)/94-Judl.]

P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 27 अप्रैल, 1994

का. आ. 1166:—नोटरी नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्रीमति सिविन्दरजीत छिन्ना एडवोकेट के उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे अमृतसर (पंजाब) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5 (58)/94-न्यायिक]

पी. सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 27th April, 1994

S.O. 1166.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Rules, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Mrs. Satinderjit Chhina, Advocate for appointment as a Notary to practise in Amritsar (Punjab).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[F. No. 5(58)/94-Judl.]

P. C. KANNAN, Competent Authority

गृह मंत्रालय

(पुनर्वास प्रभाग)

नई दिल्ली, 25 जनवरी, 1994

का. आ. 1167 :—1980 के अधिनियम 61 और 1984 के अधिनियम 35 द्वारा यथा संशोधित सार्वजनिक परिसर (अनधिकृत कब्जे से बेदखली) अधिनियम 1971 (1971 के 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत के राजपत्र के भाग-II खण्ड-3 उप खण्ड (ii) में प्रकाशित भारत सरकार गृह मंत्रालय पुनर्वास प्रभाग की दिनांक 21-1-1991 की अधिसूचना सं. 1 (1) विशेष सेल 91-सेटलमेंट का अधिक्रमण करते हुए केन्द्र सरकार एतद्वारा श्री डी.पी. भारद्वाज डेस्क अधिकारी को (जो गृह मंत्रालय पुनर्वास प्रभाग के बन्दोबस्त विंग में सहायक बन्दोबस्त आयुक्त के पद का अतिरिक्त प्रभार संभाले हुए है) सरकार का राजपत्रित अधिकारी होने के नाते उक्त अधिनियम के प्रयोजनार्थ सम्पदा अधिकारी नियुक्त करती है। वह राष्ट्रीय राजधानी क्षेत्र दिल्ली में लाजपतराय मार्केट तथा कोटला फिरोजशाह में स्थित सार्वजनिक परिसर के संबंध में उक्त अधिनियम के अन्तर्गत सम्पदा अधिकारी के कर्तव्यों का निष्पादन करेंगे और शक्तियों का प्रयोग करेंगे।

[सं. 1(1)/विशेष सेल/91-सेटलमेंट]

एम.पी. सिंह, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

(Rehabilitation Division)

New Delhi, the 25th January, 1994

S.O. 1167.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971) as amended by Act 61 of 1980 and Act (35 of 1984) and in supersession of Government of India, Ministry of Home Affairs, Rehabilitation Division's Notification No. 1(1)/Spl. Cell/91-Settlement, dated the 21-1-1991, published in the Gazette of India, Part-II, Section 3, Sub-Section (ii), the Central Government hereby appoints Shri D. P. Bhardwaj, Desk Officer (holding additional charge of the post of Assistant Settlement Commissioner in the Settlement Wing of Rehabilitation Division, Ministry of Home Affairs), being a Gazetted Officer of the Government, to be an Estate Officer for the purpose of the said Act. He shall exercise the powers and perform the duties of an Estate Officer under the said Act in respect of public premises, situated in the Lajpat Rai Market and Kotla Ferozeshah in the National Capital Territory of Delhi.

[No. 1(1)/Spl. Cell/91-Settlement]

M. P. SINGH, Jr. Secy.

कामिक, लोक शिकायत तथा पेंशन मंत्रालय

(कामिक और प्रशिक्षण विभाग)

नई दिल्ली, 2 मई, 1994

का. आ. 1168 :—दण्ड प्रक्रिया संहिता 1973 (1974 का 2) की धारा 24 की उपधारा (8) के द्वारा

प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा सब न्यायालय अम्बाला में दिल्ली विशेष पुलिस स्थापना के नियमित मामला संख्या 2(एस.) 91-ए.सी.यू.-7 राज्य प्रति ओ.पी. कथाल तथा अन्य में आपराधिक निगरानी तथा आपराधिक निगरानी से संबंधित अन्य कार्य-वाही के संचालन हेतु श्री एन.के. शर्मा अधिवक्ता दिल्ली को विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[संख्या 225/3/94-ए.बी.डी.-II]

आर.एम. बिष्ट, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSION

(Department of Personnel and Training)

New Delhi, the 2nd May, 1994

S.O. 1168.—In exercise of the powers conferred by Sub-Section (8) of Section 24 of the Code of Criminal Procedure 1973 (2 of 1974), the Central Govt. hereby appoints Sh. N. K. Sharma, Advocate Delhi as Special Public Prosecutor for the purpose of conducting the criminal Revision and also other connected proceedings out of Criminal Revision in Delhi Special Police Establishment Regular case No. RC-2(S)/91-ACU(VII) State Vs. O. P. Katyal and others in the Sessions Court of Ambala.

[F. No. 225/3/94-AVD. II]

R. S. BISHT, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

नई दिल्ली, 18 मार्च, 1994

आयकर

का.आ. 1169 :—आयकर अधिनियम 1961 (1961 का 43) की धारा 10 के खंड (23-ग) के उपखंड (5) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा "श्री देवराजस्वामी देवस्थानम कान्चीपुरम तमिल-नाडू" को कर-निर्धारण वर्ष 1989-90 के लिए उक्त उपखंड के प्रयोजनार्थ अधिसूचित करती है।

[अधिसूचना सं. 9507/फा.सं. 197/127/93-आयकर
(नि.-1)]

शरत चन्द्र, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 18th March, 1994

(INCOME-TAX)

S.O. 1169.—In exercise of the powers conferred by sub-clause (v) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies "Sri Devarajaswamy Devasthanam, Kancheepuram, Tamil Nadu" for the purpose of the said sub-clause for the assessment year 1989-90.

[Notification No. 9507/F. No. 197/127/93-ITA-I]

SHARAT CHANDRA, Under Secy.

नई दिल्ली 18 मार्च, 1994

आयकर

का.आ. 1170.—आयकर अधिनियम 1961 (1961 का 43) की धारा 10 के खंड (23-ग) के उपखंड (5) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा "देवराजस्वामी देवस्थानम् कंचोपुरम् तमिलनाडु" को कर-निर्धारण वर्ष 1990-91 से 1992-93 तक के लिए निम्नलिखित शर्तों के अधीन रखते हुए, उक्त उपखंड के प्रयोजनार्थ अधिसूचित करती है अर्थात्:—

- (1) कर-निर्धारिता इसकी आय का इन्वेंचरल अथवा इसकी आय का इन्वेंचरल करने के लिए, इसका संवत् पूर्णतया तथा अनुवत्तया उन उद्देश्यों के लिए करेगा जिनके लिए इसकी स्थापना की गई है;
- (2) कर-निर्धारिता उपर-उल्लिखित कर-निर्धारण वर्षों से संवत् पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उपधारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक दंग अथवा तरीकों से भिन्न तरीकों से इसकी निधि (जैसे—जवाहिरात फर्निचर आदि के रूप में प्राप्त तथा रख-रखाव में स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करवा सकेगा;
- (3) यह अधिसूचना किसी ऐसी आय के संबंध में लागू नहीं होगी जो कि कारोबार से प्राप्त लाभ तथा अभिलाभ के रूप में हो जब तक कि ऐसा कारोबार उक्त कर-निर्धारिता के उद्देश्यों की प्राप्ति के लिए प्रासंगिक नहीं हो तथा ऐसे कारोबार के संबंध में अलग से लेखा-पुस्तिकाएं नहीं रखी जाती हों।

[अधिसूचना सं. 9508 (फा.सं. 197/127/93-आयकर-
नि.-1)]

शरत चन्द्र, अवर सचिव

New Delhi, the 18th March, 1994

(INCOME-TAX)

S.O. 1170.—In exercise of the powers conferred by sub-clause (v) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies "Sri Devarajawamy Devasthanam, Kancheepuram, Tamil Nadu" for the purpose of the said sub-clause for the assessment years 1990-91 to 1992-93 subject to the following conditions, namely:—

- (i) the assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established;
- (ii) the assessee will not invest or deposit its funds (other than voluntary contributions received and maintained in the form of jewellery, furniture etc.) for any period during the previous relevant to the assessment years mentioned above otherwise than in any

one or more of the forms or modes specified in sub-section (5) of Section 11;

- (iii) (this notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business.

[Notification No. 9508/F. No. 197/127/93-ITA-I]

SHARAT CHANDRA, Under Secy.

आदेश

नई दिल्ली, 26 अप्रैल, 1994

का.आ. 1171.—भारत सरकार के संयुक्त सचिव ने जिसे विदेशी मुद्रा संरक्षण और नष्करी निवारण अधिनियम 1974 (1974 का 52) की धारा 3 की उपधारा के अधीन आदेश फा. सं. 673/87/93-सी.शु.-8 दिनांक 2-11-93 को यह निर्देश जारी किया था कि श्री एच. हाजा अलाउद्दीन नं. 9 याहसुसैन स्ट्रीट, नागापट्टिनम को निरुद्ध कर लिया जाये और केन्द्रीय कारागार मद्रास में अभिरक्षा में रखा जाये ताकि उसे ऐसा कोई भी कार्य करने से रोका जा सके जो विदेशी मुद्रा के संवर्धन के लिये हानिकारक हो।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके;

3. अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिनों के भीतर पुलिस आयुक्त मद्रास के समक्ष हाजिर हों।

[फा.सं. 673/87/93-सी.शु.-8]

जमना दास, अवर सचिव

ORDER

New Delhi, the 26th April, 1994

S.O. 1171.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673/87/93-Cus VIII dated 2-11-1993 under the said sub-section directing that Shri H. Haja Alauddeen, No. 9, Yahussain Palli Street, Nagapattinam be detained and kept in custody in the Central Prison, Madras with a view to preventing him from indulging in activities prejudicial to the augmentation of Foreign Exchange resources in future.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of the power conferred by clause (b) of sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Madras within 7 days of the publication of this order in the official Gazette.

[F. No. 673/87/93-CUS. VIII]
JAMNA DAS, Under Secy.

केन्द्रीय प्रत्यक्ष कर बोर्ड

नई दिल्ली, 13 अप्रैल, 1994

का.आ. 1172—आयकर अधिनियम 1961 की धारा 36 की उपधारा (1) के खण्ड (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा संसद पर सी आई सी आई निमिटेड 141, मेकर टावर 'एफ' कफी परेड बम्बई-400005 को एक कंपनी के रूप में उक्त खण्ड के प्रयोजनार्थ कर निर्धारण वर्ष 1994-95 से 1996-97 तक अनुमोदित करती है।

2. यह अनुमोदन इस शर्त पर किया जाता है कि कंपनी आयकर अधिनियम 1961 की धारा 36(1) (8) के प्रावधानों के अनुरूप होगी और उनका अनुपालन करेगी।

[अधिसूचना सं. 9534/फा.स. 204/
20-93-आयकर.नि.-2]

अजय कुमार अवर सचिव

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 13th April, 1994

S.O. 1172. In exercise of the powers conferred by clause (viii) of sub-section (1) of Section 36 of Income-tax Act, 1961, the Central Government hereby approves M/s. SCICI Ltd., 141, Maker Tower 'F', Cuffee Parade, Bombay-400 005 as a company for the purpose of said clause for assessment years 1994-95 to 1996-97.

2. The approval is subject to the condition that the company will conform to and comply with the provisions under section 36(1)(viii) of Income-tax Act 1961.

[Notification No. 9534/F. No. 204/20/93-ITA. II]
AJAY KUMAR, Under Secy. (ITA-II)

कृषि मंत्रालय

(कृषि अनुसंधान तथा शिक्षा विभाग)

नई दिल्ली 25 अप्रैल, 1994

का.आ. 1173—केन्द्रीय सरकार, कृषि मंत्रालय, कृषि अनुसंधान तथा शिक्षा विभाग, राजभाषा (संघ के शासकीय प्रयोजनों के लिये प्रयोग) नियम 1976 के नियम 10 के उपनियम (4) के अनुसरण में एतद्वारा भारतीय कृषि अनुसंधान परिषद के निम्नलिखित संस्थानों जिनके 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है को अधिसूचित करने हैं।

1. केन्द्रीय मात्स्यीक प्रौद्योगिकी संस्थान विलिंगडन आईलैंड मत्स्यपुरी पो.ग्रो. कोच्चिन।

2. केन्द्रीय मृदा जलवायु अनुसंधान संस्थान करनाल (हरियाणा)

संख्या 13-9/94-हिं.शे
आर.पी. सरोज, अवर सचिव

MINISTRY OF AGRICULTURE

(Department of Agri. Res. & Education)

New Delhi, the 25th April, 1994

S.O. 1173.—In pursuance of Sub-Rule 4 of Rule 10 of the Official Language (Use of Official purpose of the Union) Rule 1976, the Central Government, Ministry of Agriculture, Department of Agricultural Research & Education hereby notifies the following Institutes of ICAR, where more than 80 per cent of Staff have acquired the working knowledge of Hindi.

1. Central Institute of Fisheries Technology Willingdon Island, Matsyapuri P.O., Cochin.

2. Central Soil Salinity Research Institute, Karnal (Haryana).

[No. 13-9/94-Hindi]

R. P. SAROJ, Under Secy.

मानव संसाधन विकास मंत्रालय
(शिक्षा विभाग)

नई दिल्ली, 26 अप्रैल, 1994

का.आ. 1174—केन्द्रीय सरकार राजभाषा (संघ के सरकारी प्रयोजनों के लिये प्रयोग) नियम 1976 के नियम 10 के उपनियम (4) के अनुसरण में मानव संसाधन विकास मंत्रालय (शिक्षा विभाग) के निम्नलिखित अधीनस्थ कार्यालय को जिसमें 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

श्रमिक विद्यापीठ दिल्ली,
वेस्ट ब्लॉक नं. 8, द्वितीय तल
विंग नं. 7, आर. के. पुरम,
नई दिल्ली-110022

(सं. 11011/2/92-रा.भा.ए.)

ओ.पी. चावला, निदेशक (राजभाषा)

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Education)

New Delhi, the 26th April, 1994

S.O. 1174.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (use for Official Purpose of the union) Rules 1976, the Central Government hereby notifies the following Subordinate Office of the Ministry of Human Resource Development (Deptt. of Education) more than 80% staff of which has acquired working knowledge of Hindi :—

Shramik Vidyapeeth Delhi,
West Block-8. Wing-7, Second Floor,
R. K. Puram, New Delhi-110022.

[No. 11011-2/92-O.I.U.]

O. P. CHAWLA, Director (O.L.)

(महिला एवं बाल विकास विभाग)

पूर्व विन्यास अधिनियम, 1890 (1890 का 6) के
गामने में राष्ट्रीय बाल कोष, नई दिल्ली के मामले में

नई दिल्ली, 22 अप्रैल, 1994

का.आ. 1175.—राष्ट्रीय बाल कोष, नई दिल्ली के प्रबन्ध बोर्ड द्वारा किये आवेदन पर और उनकी सहमति से पूर्व विन्यास अधिनियम, 1890 (1890 का 6) के खण्ड 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा, आदेश देती है कि तीन दिये गये व्यौने के अनुसार रु. 27,05,140 (मत्सईस लाख पांच हजार एक सौ चालीस मात्र) (30,00,000 - छुट कीमत की राशि) स्टेट बैंक आफ पटियाणा सूर्य नगर शाखा गाजियाबाद में एक वर्ष के लिये मर्टिफिकेट आफ डिपॉजिट योजना के अन्तर्गत 10.90% की ब्याज दर पर 29-3-94 से निवेश की गई।

क्रम सं.	राशि	पिछले निवेश की तारीख	भुगतान की तारीख	अभि-युक्तियां
1.	रु. 1,00,000/-	29-3-89	29-3-94	—
2.	रु. 15,00,000/-	01-2-94	29-3-94	—
3.	रु. 11,05,140/-	—	—	—

राष्ट्रीय बाल कोष के पास उपलब्ध बकाया रोकड़ में से

2. भारत सरकार के तत्कालीन सभाज कल्याण विभाग के दिनांक 2 मार्च, 1979 के समय-समय पर यथा संशोधित सां.आ. 120(ई) की अधिसूचना के साथ प्रकाशित राष्ट्रीय बाल कोष, नई दिल्ली के संचालन की योजना के अनुसार प्रयोग किये जाने हेतु उपरोक्त खाता भारतीय पूर्व विन्यास के खजांची के नाम होगा।

[सं. 13-6/94-टी. आर.]

राकेश कुमार वर्मा, उप सचिव

(Department of Women & Child Development)

IN THE MATTER OF THE CHARITABLE ENDOWMENTS ACT 1890 (6 of 1890)

IN THE MATTER OF THE NATIONAL CHILDREN'S FUND, NEW DELHI.

New Delhi, the 22nd April, 1994

S.O. 1175.—On the application made by and with the concurrence of the Board of Management of the National Children's Fund, New Delhi and in exercise of the powers concerned by Section 4 of the Charitable Endowments Act 1890 (6 of 1890), the Central Government do hereby order that the sum of Rs. 27,05,140 (Rupees Twentyseven lakh

Five thousand One hundred and Forty only) (discounted value of Rs. 30,00,000) as per particulars given below be de-invested in Certificate of Deposit Scheme for one year in State Bank of Patiala, Surya Nagar Branch, New Delhi, at the rate of interest 10.9 per cent per annum w.e.f. 29-03-94.

Sl. No.	Amount	Date of previous investment	Date of Maturity	Remarks
1.	Rs. 1,00,000/-	29.03.89	29.03.94	
2.	Rs. 15,00,000/-	09.02.94	30.03.94	
3.	Rs. 11,05,140/-			From cash balance of N. C. F.

2. The above account shall vest in the Treasurer of Charitable Endowments of India to be held by him for being applied in accordance with the scheme for the administration of the National Children's Fund, New Delhi published with the Notification of the Government of India in the then Department of Social Welfare No. S.O. 120(E) dated the 2nd March, 1979 as amended from time to time.

[F. No. 13-6/94-TR-II]
R. K. VERMA, Dy. Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

आदेश

नई दिल्ली, 12 अप्रैल, 1994

का.आ. 1176.—युनिवर्सिटी आफ वेस्टर्न आन्टेरियो, कनाडा द्वारा प्रदान की गई एम.डी. की आयुर्विज्ञान अर्हता, भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) के प्रयोजन के लिये एक मान्यताप्राप्त आयुर्विज्ञान अर्हता है;

और डा. बेल एलेट्टा ग्रेस, जिनके पास उक्त अर्हता है पूर्व कार्य के लिये उक्त अस्पताल, रक्सौल, पूर्वी चंपारण जिला, बिहार में संलग्न है।

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 14 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस आदेश के प्रकाशन की तारीख से दो वर्ष की वह अवधि, जिसके दौरान डा. बेल एलेट्टा ग्रेस, उक्त अस्पताल, रक्सौल, पूर्वी चंपारण जिला, बिहार में संलग्न है, विनिर्दिष्ट करती है जिस तक उक्त डाक्टर द्वारा चिकित्सा व्यवसाय सीमित होगा।

[संख्या की.-11016/15/91-एम.ई. (यू.जी.)]

एम.के. मिश्र, डैस्क अधिकारी

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

ORDER

New Delhi, the 12th April, 1994

S.O. 1176.—Whereas the medical qualification of M.D. granted by University of Western Ontario, Canada, is a recognised medical qualification for the purpose of the Indian Medical Council Act, 1956 (102 of 1956);

And whereas Dr. Bell Aletta Grace who possesses the said qualification is attached to Duncan Hospital, Raxaul, East Champaran District, Bihar for charitable work.

Now therefore, in exercise of the powers conferred by sub-section (1) of section 14 of the said Act, the Central Government hereby specifies the period of two years from the date of publication of this order during which Dr. Bell Aletta Grace is attached to Duncan Hospital, Raxaul, East Champarn District, Bihar, to which the medical practice by the said Doctor shall be limited.

[No. V. 1106/15/94-ME(UG)]
S. K. MISHRA, Desk Officer

(ii) against serial No. 15 for entry under column (2), the following shall be substituted, namely :—

"Shri V.G. Devakaran, Regional Provident Fund Commissioner, Madras.

Shri T. Krishnaswamy, Assistant Provident Fund Commissioner, Madras.

[No. R-11013/2/90-SS.JI]

J. P. SHUKLA, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 18 अप्रैल, 1994

का.आ. 1177.—कर्मचारी भविष्य निधि एवं प्रकीर्ण उपबन्ध अधिनियम, 1952 (1952 का 19) की धारा 2 के खण्ड (टब) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए, केन्द्रीय सरकार 3 जुलाई, 1990 को भारत के राजपत्र समाधारण के भाग II, खण्ड 3, उप खण्ड (ii) में प्रकाशित भारत सरकार के श्रम मंत्रालय को दिनांक 29 जून, 1990 की अधिसूचना का.आ. सं. 533(श) में निम्नलिखित संशोधन करती है, अर्थात् :—

(i) क्रम संख्या 7 के सामने स्तंभ (2) के अन्तर्गत की गयी प्रविष्टि के लिये निम्नलिखित प्रविष्टि प्रतिस्थापन की जायेगी अर्थात् :—

"श्री बी. कृष्णामूर्ति,
सहायक भविष्य निधि आयुक्त
त्रिबेन्द्रम"

(ii) क्रम संख्या 15 के सामने स्तंभ (2) पर की गयी प्रविष्टि के लिये निम्नलिखित प्रविष्टि प्रतिस्थापित की जायेगी अर्थात् :—

"श्री बी.जी. देवकरण
क्षेत्रीय भविष्य निधि आयुक्त
मद्रास
श्री टी. कृष्णास्वामी,
सहायक भविष्य निधि आयुक्त
मद्रास"

[संख्या आर.-11013/2/90-एस.एम.-II]

जे.पी. शुकला, अवर सचिव

MINISTRY OF LABOUR

New Delhi, the 18th April, 1994

S.O. 1177.—In exercise of the powers conferred by clause (b) of Section 2 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following amendment in the Notification of the Government of India, Ministry of Labour No. S.O. 533(E), dated the 29th June, 1990, published in Part II Section 3, Sub-section (ii) of the Gazette of India, Extraordinary dated the 3rd July, 1990 namely :—

In the Schedule to the said Notification :—

(i) against serial No. 7 for the entry under column (2), the following shall be substituted, namely :—

"Shri V. Krishnamurthy, Assistant Provident Fund Commissioner, Trivandrum."

नई दिल्ली, 4 मई, 1994

का.आ. 1178.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 87 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स हिंदुस्तान नैटेक्स लिमिटेड, कनांगला को उक्त अधिनियम के प्रवर्तन से प्रथम जनवरी, 1994 से 31 दिसंबर, 1994 तक की अवधि के लिए जिसमें यह तारीख भी सम्मिलित है, छूट देती है।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है, अर्थात् :—

(1) उक्त कारखाने का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम प्रवृत्त था (जिसे इसमें इसके पश्चात् उक्त अवधि कहा गया है) ऐसी विवरणियां ऐसे प्ररूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी थी,

(2) निगम द्वारा उक्त अधिनियम की धारा 45 की उपधारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या इस निमित्त प्राधिकृत निगम का कोई अन्य पदधारी,

(i) धारा 44 की उपधारा (1) के अधीन, उक्त अवधि के लिए दी गई किसी विवरणी की विशिष्टियों को सत्यापित करने के प्रयोजनों के लिए, या

(ii) यह अभिनिश्चित करने के प्रयोजनों के लिए कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथा अपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गए थे या नहीं, या

(iii) यह अभिनिश्चित करने के प्रयोजनों के लिए कि कर्मचारी, नियोजक द्वारा दी गई उन प्रसुविधाओं को, जो ऐसी प्रसुविधाएं हैं जिनके प्रतिफलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं, या

(iv) यह अभिनिश्चित करने के प्रयोजनों के लिए कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबन्ध प्रवृत्त थे, ऐसे किन्हीं

उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा :—

(क) प्रधान नियोजक या अव्यवहित नियोजक से यह अपेक्षा करना कि वह उसे ऐसी जानकारी दे जो वह आवश्यक समझे, या

(ख) ऐसे प्रधान नियोजक या अव्यवहित नियोजक के अधि-भोग में के कारखाने, स्थापन, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके भारसाधक व्यक्ति से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संवाय से संबंधित ऐसे लेखाबहियों और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दे या वह उसे ऐसी जानकारी दे जो वह आवश्यक समझे, या

(ग) प्रधान नियोजक या अव्यवहित नियोजक को, उसके अभिकर्ता या सेवक की या ऐसे किसी व्यक्ति की जो ऐसे कारखाने, स्थापन, कार्यालय या अन्य परिसर में पाया जाए, या ऐसे किसी व्यक्ति की जिसके बारे में उक्त निरीक्षक या अन्य पदधारी के पास यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना, या

(घ) ऐसे कारखाने, स्थापन, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखाबही या अन्य दस्तावेज की नकल करना या उससे उद्धरण लेना।

[संख्या एस-38014/7/93-एस एस-1]

जयप्रकाश शुक्ल, अवसर सचिव

स्पष्टीकारक ज्ञापन

इस मामले में छूट को भूलक्षी प्रभाव देना आवश्यक हो गया है क्योंकि छूट के आवेदन पर कार्यवाही करने में समय लगा था। किंतु यह प्रमाणित किया जाता है कि छूट को भूलक्षी प्रभाव देने से किसी भी व्यक्ति के हित पर प्रतिकूल प्रभाव नहीं पड़ेगा।

New Delhi, the 4th May, 1994

S.O. 1178.—In exercise of the powers conferred by Section 87 read with section 91-A of the Employees State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts M/s. Hindustan Latex Limited, Kanagala Belgaum-25 from the operation of the said Act for a period of one year with effect from 1st January, 1994 up to and inclusive of the 31st December, 1994.

2. The above exemption is subject to the following Conditions, namely :—

(1) The employer of the said factory shall subject in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred to as the said period), such returns in such form and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950.

1114 GI/94—2

(2) Any Inspector appointed by the Corporation under sub-section (1) of Section 45 of said Act or other official of the Corporation authorised in this behalf shall, for the purpose of :—

(i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 for the said period; or

(ii) ascertaining whether registers and records, were maintained as required by the Employees' State Insurance (General) Regulations 1950 for the said period; or

(iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration which exemption is being granted under this notification; or

(iv) ascertaining whether any of the provisions of the said Act has been complied with during the period when such provisions were in force in relation to the said factory :

be empowered to :—

(a) require the principal or immediate employer to furnish to him such information as he may consider necessary; or

(b) entry any factory establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found incharge thereof to produce to such Inspector or other official and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employer, his agent or servant or any person found in such factory, establishment, office or other premises or any person whom the said Inspector or other official has reasonable cause to believe to have been an employee; or

(d) make copies of or take extracts from any register account book or other document maintained in such factory, establishment, office or other premises.

[F. No. S-38014/7/93-SS.I.]

J. P. SHUKLA, Under Secy.

EXPLANATORY MEMORANDUM

It has become necessary to give retrospective effect to the exemption in this case as the processing of application for exemption took time. However, it is certified that the grant of exemption with retrospective effect will not affect the interest of any body adversely.

नई दिल्ली, 5 मई, 1994

का.आ. 1179.—कर्मचारी राज्य बीमा अधिनियम 1948 (1948 का 34) की धारा-1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 16-5-1994 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 धारा-44 और 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है (और अध्याय-5 और 6) धारा-76 की उपधारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है)

के उपबंध तमिलनाडु राज्य के निम्नलिखित क्षेत्र में प्रवृत्त होंगे, अर्थात्:—

“जिला एवं तालुक मलेम में राजस्व ग्राम ईन्मापालायम, मसीनाइकानपट्टी रेड्डीयूर ग्रुप और कंडमपट्टी के अंतर्गत आने वाले क्षेत्र”।

[संख्या : एस-38013/6/94-एमएस-1]

जे.पी. शुकला, अधिवक्ता

New Delhi the 5th May, 1994

S.O. 1179—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 16th May, 1994 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI (except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Tamil Nadu namely:—

“Area comprising the revenue villages of Erumapalayam, Masinaickanpatty, Reddiyur Group and Kandampatty in taluk and District of Salem”.

[No. S-38013/6/94-SS.I]
J. P. SHUKLA, Under Secy.

नई दिल्ली, 19 अप्रैल, 1994

का.आ. 1180.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, एस सी सी एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-4-94 को प्राप्त हुआ था

[सं. एल-22012/313/91 आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 19th April, 1994

S.O. 1180.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.C.C. Ltd and their workmen, which was received by the Central Government on the 18th April, 1994.

[No. L-22012/313/91-IR (C.II)]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESIDENT:

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.
Dated, the 16th day of March, 1994
Industrial Dispute No. 77 of 1991

BETWEEN

The Vice-President, S. C. Workers Union
(AITUC) Godavarikhani. ...Petitioner.

AND

The General Manager R.G.I,
Singareni Collieries Company Limited,
(P.O.) Godavarikhani. ...Respondent.

APPEARANCES:

Sri B. Ganga Ram, Representative—for the Petitioner.
M/s. K. Srinivasa Murthy, G. Sudha, Advocates—for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-22012(313)/91-IR(C.II) dated 6th December, 1991 referred the following dispute under Section 10(1) (d)(2A) of the Industrial Disputes Act, 1947 between the management of M/s. Singareni Collieries Company Limited, R.G.I, Godavarikhani and their workmen to this Tribunal for adjudication:

“Whether the management of SCCL, R.G.I, Godavarikhani action for not promoting Sri Nagula Rajam, Tub Repairing Maistry Cat-IV to Cat-V at par with Sri E. Chandraiah Tub Repairing Maistry Cat. V who is junior to him is justified or not? If not, to what relief the workman is entitled to?”

This reference is registered as Industrial Dispute No. 77 of 1991 and notices were issued to both the parties.

2. The brief facts of the claims statement filed by the Petitioner read as follows:—Sri Nagula Rajam worked as Tub Repairing Mazdoor Cat. II at area workshop at Godavari Khani and got promotion to Cat. IV on 9th September, 1979. He was transferred from Area Workshop to GDK No. 5A Incline vide letter dated 8th July, 1983. He was promoted to Cat. IV w.e.f. 1st March, 1980, i.e. 6 months after promotion of Sri Nagula Rajam to Cat. IV. Thus Sri Engu Chandraiah was trade tested and after his passing in the trade test Sri E. Chandraiah was promoted to Cat. V w.e.f. 1-3-1983 i.e. after completion of 3 years service in the Cat. IV. Sri Nagula Rajam and Sri E. Chandraiah both are working in GDK 5A Incline as Tub repairing maistries. The junior Sri E. Chandraiah is getting Cat. V wages and senior Sri N. Rajam is getting Cat. IV wages, even though both are performing the same job. Hence the demand of Sri N. Rajam that he should be placed in Cat. IV with retrospective effect from 9-9-1982 is quite proper and justified. Later on the management reverted Sri Engu Chandraiah from Cat. I to Cat. IV after 5 months vide additional CME KG II letter dated 7-8-1983 stating that the cadre scheme is not applicable to the tub repairing maistries and that the promotion of E. Chandraiah was given by mistake. On this a dispute was raised and it was referred to the Hon'ble Industrial Tribunal, Hyderabad and (this dispute was numbered as I.D. 42/84). The Hon'ble Tribunal held that the Management of Singareni Collieries Company Limited, Ramagundam Division II is not justified in reverting Sri Engu Chandraiah tub repairing maistry GDK 5A Incline from Cat. I to Cat. IV and Sri Engu Chandraiah is entitled to be continued in Cat. V from the date of his reversion and the order of reversion under Ex. W3 is set aside as illegal and void. The management's plea that the cadre scheme is applicable to the tradesmen and not to the tub repairing maistries is not correct. The fact is that 3 Tub repairing maistries of Godavari Khani workshop S/Sri Katla Ellaiah, T. Rajaiah and K. Rajamouli were promoted from Cat. IV to Cat. V with effect from 1-3-1979 vide Divisional Superintendent R. G. letter dt. 23/27-12-1979. It is a clear proof that those tub repairing maistries were promoted from Cat. IV to Cat. V some 4 years before, Sri Engu Chandraiah was promoted to Cat. V from 1-3-1983. Moreover they were not reverted from Cat. V to Cat. IV in the name of any wrong plea and they are till continuing in Cat. V. It is the fundamental principles of promotion that in any case the senior workman should not get less wages than his junior when both of them are performing one and the same job as tub repairing maistries under the same roof in the same mine of GDK No. 5A Incline. Hence the demand of Sri Nagula Rajam that he should be promoted to Cat. V w.e.f. 9-9-1982 is quite justified. The action of the Management for not promoting Sri Nagula Rajam tub repairing maistry from Cat. IV to Cat. V at par with Sri E. Chandraiah tub repairing maistry Cat. V who is junior to him is not justified. Therefore they pray the Hon'ble Tribunal to consider this

sympathetically and pass award that the management should promote Sri Nagula Rajam to Cat. V with effect from 9-9-1982 i.e. from the date of his completion of 3 years service in Cat. IV at par with Sri E. Chandraiah who is junior to Sri Nagula Rajam.

3. The brief facts of the counter filed by the Respondent-Management read as follows:—Sri Nagula Rajam was appointed in the Company on 28-3-1965 as General Mazdoor. Later he was promoted as Tub Repairing Mazdoor in Cat. II on 1-12-1972. Subsequently Sri N. Rajam was promoted as Tub Repairing Maistry on 9-9-1979. On completion of 10 years of service in Cat. IV he was upgraded to Cat. V w.e.f. 1-7-1990 under the scheme of Service Linked Upgradation as per the provisions of National Coal Wage Agreement IV. The Tub repairing mazdoors working in Cat. II under the Tub Repairing Maistry are eligible to be appointed as Tub Repairing Maistry. For filling up the vacancies of Tub Repairing Maistry a Trade Test will be conducted for the Tub Repairing Mazdoors and basing upon seniority-cum-merit and availability of vacancies, they are posted as Tub Repairing Maistries. Experience, skill and aptitude in the job of Blacksmith, are necessary for the post of Tub-Repairing Maistry as such the Tub Repairing Mazdoors who are already working under Tub Repairing Maistry will be considered for promotion as Tub Repairing Maistries. Thus, Sri Nagula Rajam was also promoted on 9-9-1979 as Tub Repairing Maistry. He can not compare his case with seniors who are covered under Wage Board Recommendations of 1967 and who were given promotion as one time measure as per the Circular dated 26-10-1979. Sri Nagula Rajam was working in Ramagundam Area I are Workshop in Tub Repairing section. He was transferred to GDK No. 5A Incline as Tub Repairing Maistry by Order dt. 8-7-1983. There is a cadre scheme for Tradesmen for promotion from Cat. IV to V and V to VI and those Tradesmen who have completed 3 years of service in Cat. IV to consider for placement in Cat. V on the basis of assessment of their performance of work and conduct. Thus Circular dt. 22-8-1981 was issued to all the mines and departments for the purpose of reviewing promotions for those Tradesmen who are in Cat. IV to V. The promotion scheme of Tradesmen who are in Cat. IV to V. The promotion scheme of Tradesmen is not applicable to Sri Enugu Chandraiah since he is not a Tradesman and he is only a Tub Repairing Maistry. The Addl. Chief Mining Engineer on the assumption and mistaken impression, gave the promotion to Sri Enugu Chandraiah to Cat. V on completion of 3 years service in Cat. IV. What the management has done in the case of Sri Enugu Chandraiah is it has rectified its mistake. What this petitioner is seeking from this Hon'ble Court is to perpetuate the mistakes. The relief which is sought by the petitioner Union and Sri N. Rajam is based on wrong impression and on wrong orders and that can not be a ground for making a new demand. According to the Company rules, the Tradesmen means, the candidates who have passed I.T.I. examinations with a particular trade. There is no Tub Repairing Trade with I.T.I. certificate. The Management is justified in pointing out to the Union that the cadre scheme is only applicable to the Tradesmen and not to the excluded categories like Tub Repairing Maistries, Bit Grinders and Masons. Management has verified all the records of these Mines and found that there are no persons, by name Sri Seshagiri, Sri Satyanarayana and Sri Arela Lingiah working in Cat. V as Tub Repairing Maistry at GDK No. 6 Incline and GDK No. 5 Incline. As per the records one Sri S. Ganga Ram, S. Ramaswamy, Kammair Narsaiah and Panuganti Das, were working at GDK No. 6 Incline in Ramagundam Area-I. What virtually the Petitioner is seeking from this Hon'ble Court is to tantamount the Wage Board recommendations and the people who are persons equating them with seniors misinterpreting the circulars and mistaken impression a promotion given to Sri E. Chandraiah is bad in law. If the relief prayed is given, is nothing but perpetuating the mistake and there are several number of Cat. IV Tub Repairing Maistries working, who will also make such a claim and which is not the promotion policy of the Company and it will tantamount Cadre Schemes and established principles of promotions. No loss has been caused to the petitioner herein and even otherwise, it may be noticed that promoting an employee with retrospective effect does not arise and there are no merits in the Petitioner's case. In view of the above mentioned facts, this Hon'ble Court may be pleased to dismiss the claim of the petitioner Union.

4. The point for adjudication is whether the management of Singareni Collieries Company Limited, R.G. I action for not promoting Sri Nagula Rajam, Tub Repairing Maistry Cat. IV to Cat. V at par with Sri E. Chandraiah, Tub Repairing Maistry Cat. V who is junior to him is justified or not?

5. W.W.1 was examined on behalf of the Petition and marked Exs. W1 to W5. No oral or documentary evidences has been adduced on behalf of the Respondent-Management.

6. W.W.1 is Nagula Rajam, in brief he deposed that he has been working as Tub Repairing Maistry in GDK 5A Incline in Godavarikhani. He was promoted to Cat. IV as Tub Repairing Fitter (Maistry) from 9-9-1979. Sri A. Chandraiah was promoted as Tub Repairing fitter Cat. IV w.e.f. 1-3-1980. 6 months after promotion Sri Chandraiah was promoted and he is 6 months junior to him. Sri Chandraiah was promoted to Cat. V wages w.e.f. 1-3-1980 i.e. after completion of 3 years service in Cat. IV. Himself and Chandraiah have been working in the same mine as Tub Repairing fitter. Both of them have been working the same job. After promoting Chandraiah to Cat. V wages he was reverted to Cat. IV wages. Ex. W1 is the award copy in I.D. No. 42/84. As per this award he was given Cat. V wages from the back date i.e. 1-3-1980 his demand is that he should be promoted to Cat. V wages w.e.f. 9-9-1982. As per the Scheme of the Wage Board, since he has been retained in the same category for the period of 10 years, he was upgraded to Cat. V from 1-7-1990 as per the service linked upgradation. This is not the promotion but this is only adjustment. He request that they should be promoted to Cat. V wages w.e.f. 9-9-1982.

7. The case of the Petitioner is that Sri N. Rajam, who was examined as W.W.1 adduced before the Hon'ble Tribunal on 28-12-1993. Sri N. Rajam stated in his deposition that he worked as Tub Repairing Mazdoor in Cat. II in Area workshop Godavarikhani and promoted as Tub Repairing Fitter (Maistry) Cat. IV on 9-9-1979 and he was transferred to GDK 5A Incline. Sri Nagula Rajam also stated that Sri Enugu Chandraiah a Tub Repairing Mazdoor in GDK 5A was promoted to Cat. IV w.e.f. 1-3-1980 i.e. 6 months after promotion of Sri N. Rajam to Cat. IV. It means that Sri E. Chandraiah is junior to Sri N. Rajam W.W.1 also deposed that Sri E. Chandraiah was trade tested and after passing the test, Sri E. Chandraiah was promoted to Cat. V w.e.f. 1-3-1983 i.e. after completion of 3 years service in Category IV. He also stated that himself and Sri E. Chandraiah both are working in the same mine i.e. GDK 5A as Tub Repairing Fitter (Maistry) and both of them doing these my job but Sri N. Rajam being senior to Sri E. Chandraiah was not promoted to Cat. V. W.W.1 also stated that later on Sri Chandraiah was reverted to Cat. IV after 5 months of his promotion stating that cadre scheme is not applicable to tub repairing fitter and promotion to Sri Chandraiah was given by mistake. He further deposed that Chandraiah raised the dispute which was referred to the Hon'ble Tribunal and it was numbered as I.D. 42 of 1984 which is marked as Ex. W1. In the said Award the Tribunal has passed award, cancelling the reversion of Sri Chandraiah to Cat. IV and restored his promotion to Cat. V from the date of his reversion and the order of reversion is set aside as illegal and void. The Management has implemented the award in I.D. No. 42/84 and E. Chandraiah's promotion to Cat. V was restored as per the award and he was paid the arrears also. It is seen that the Management has not gone in appeal in the High Court but implemented the award. As a matter of fact there was no I.T.I. in the past. There are three kinds of Fitters (Maistry). They are 1. Fitters (Mechanical) 2. Fitters (Water Supply) 3. Fitters (Tub Repairing). Although the nature of jobs of these three kinds of Fitters are different but it is skilled. Hence all of these three kinds of Fitters are called Tradesmen. The arguments of the Management in their counter statement that no employee can insist for promotion on the basis of mere seniority alone and whenever a promotion to higher post has to be made on the basis of seniority-cum-merit. In the present dispute, both are doing the same job hence their merit is the same and equal. In such cases where the merit of both the candidates is equal, the seniority becomes the guiding principles, hence Nagula Rajam who is senior to E. Chandraiah is more eligible for promotion to Cat. V than his junior colleague. The Petitioner cited a case law of Supreme Court of India. UNION

OF INDIA v. MOHANLAL KAPOOR (1974-I Labour Law Notes page 74) wherein it held :

"Explaining the relative importance of merits-cum-seniority in such cases the court explained that when selection has to be made on the basis, of merit-cum-seniority, primary consideration was merit and if the candidates possess equal merits and then seniority will be decisive factor. The application of this formula for selection of candidates for appointment is no very well established and admits of no other constitutions."

It is a settled principle of law that in any case the senior workmen should not get less wages than the junior. At least he should get equal wages to the junior or more wages than the junior. In the instant case both of the workmen E. Chandraiah and N. Rajam are doing the same job under the same roof in the same mine, hence N. Rajam should not get less wages than Sri E. Chandraiah. The petitioner cited the judgement in PUNJAB STATE ELECTRICITY BOARD v. RAVINDER KUMAR SHARMA AND OTHERS [1986 (53)FLR 732 S.C.] wherein held :

"It was held by the Supreme Court that promotion of employees who are junior is wholly bad and discriminatory and the Court directed that the petitioner be deemed to have been promoted to the post of Line Superintendent from the date juniors were promoted to the post of Line Superintendent from Linemen."

From the above it has been clear that the demand of the petitioner workman that he should be promoted to Cat. V w.e.f. 9-9-1982 on par with E. Chandraiah is quite justified. I find the action of the Management for not promoting Sri Nagula Rajam from Category IV to Category V, at par with Sri E. Chandraiah, Tub Repairing Maistry, Cat. V who is junior to N. Rajam is not justified.

8. In the result, the Management of Singareni Collieries Company Limited, R.G.L., Godavarikhani for not promoting Sri Nagula Rajam, Tub Repairing Maistry Category IV to Cat. V at par with E. Chandraiah, Tub Repairing Maistry Cat. V who is junior to him is not justified. The Respondent management is directed to promote Sri Nagula Rajam, Tub Repairing Maistry to Category V w.e.f. 9-9-1982 from the date of completion of 3 years service in Cat. IV at par with Sri E. Chandraiah and pay the arrears.

Award passed.

Typed to my dictation, given under my hand and seal of this Tribunal, this the 16th day of March, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I
Appendix of Evidence

Witnesses Examined for Workmen :	Witnesses Examined for Management :
W.W.1 Nagula Rajam	-NIL

Documents marked for the Petitioner/Workmen

Ex. W1—Award Copy in I.D. 42/84.

Ex. W2/24-7-90—Letter addressed to the General Manager by the Union.

Ex. W3/29-3-91—Letter addressed to the Asstt. Commissioner of Labour, Mancherla for conciliation.

Ex. W4—Minutes of the Conciliation Proceedings.

Ex. W5—Conciliation failure report.

नई दिल्ली, 19 अप्रैल, 1994

का आ. 1181.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भागीय खाद्य निगम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मद्रास के

पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-4-94 को प्राप्त हुआ था।

[सं. एल-42012/48/83 डी-II (बी)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 19th April, 1994

S.O. 1181.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Madras as shown in the Annexure in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on the 18th April, 1994.

[No. L-42012/48/93-D.II(B)]
RAJA LAL, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU,
MADRAS

Tuesday, the 1st day of February, 1994

PRESENT :

Thiru K. Sampath Kumaran, B.A.B.L., Industrial Tribunal

I.D. No. 72/1984

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the management of Food Corporation of India, (Madras)

BETWEEN

Shri B. Nandakumar,
44, Narasiyar Street,
Old Washerman pet.
Madras-600021.

AND

The Sr. Regional Manager,
Food Corporation of India,
5/54, Greaves Road,
Madras-600006.

REFERENCE :

Order No. L 42012(48)/93-D.II.B/D.V, dated 28th August, 1984, Ministry of Labour and Rehabilitation, Department of Labour, Government of India, New Delhi.

This dispute coming on for hearing on the 27th day of January, 1994 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru A. Shanmugham Advocate appearing for the workman and of Thiru N. V. Balasubramanian, Advocate appearing for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following.

AWARD

This reference has been made for the adjudication of the following issue :

"Whether the action of the Management of Food Corporation of India, Madras in not giving opportunity to offer himself for re-employment to the retrenched NMR workman Shri D. Nandakumar at F.C.I. Avadi, is justified? If not, to what relief is the workman concerned entitled to ?

2. The petitioner filed the following Claim Statement

The claimant-petitioner was appointed as Work Assistant under the category of Semi-skilled on NMR basis for the construction of godown at the Food Corporation of India Avadi in reference EE/Civil/RO/14/76 dated 8th December, 1976 alongwith 2 others. The work in the construction

and maintenance of godown in Avadi food storage depot of the Food Corporation of India and the establishment are of permanent nature. The post of Work Assistant under the semi-skilled category is permanent. The petitioner-claimant was in continuous service from 9th December, 1976 to 1st November, 1977, as the claimant worked from 8th December, 1976 till 29th October, 1977 without break for a total period of 325 days in the service of the Food Corporation of India. The petitioner was paid wages accordingly for the entire period. The respondent is an 'employer' within the meaning of Section 2(g) of the Industrial Disputes Act and the employment of the petitioner in the respondent's Avadi Food Storage Depot and godown is employment in the "Industry" within the meaning of "Industry" under Section 2(j) of the Industrial Disputes Act. This respondent accepted the verdict of the conciliation officer directing the Food Corporation of India to reinstate Mr. Ramakrishnan, Wireman Grade-II on daily rated basis. The respondent reinstated the said workman and made him Wireman Grade-II as permanent. The petitioner is a 'workman' within the meaning of the term 'workman' under Section 2(s) of the Industrial Disputes Act and has been illegally terminated by the respondent without any notice of termination and without payment of wages for the period of notice. The claimant-petitioner has worked continuously for more than 240 days. The termination is illegal, null and void, and is in contravention of the mandatory, statutory provision in Section 25-F of the Industrial Disputes Act. The claimant is entitled to be reinstated to service with full back wages. The petitioner is without employment from 30th October, 1977 till date.

3. After the termination of the service of the claimant-petitioner, the respondent has employed afresh certain employees who were later made permanent employees of the Food Corporation of India. The principle of 'Last come First Go' has been ignored. The respondent has deliberately victimised the claimant-petitioner and recruited certain other workers as employees, who were made permanent. One such case is Ms. Kamakshi who was made permanent. There are many others who were recruited much later and who were made permanent. As many as 15 juniors to the claimant-petitioner were appointed on regular basis, when the claimant was denied of such an opportunity. The period of continuous service would include all Sundays and national holidays as per Section 25-B of the Industrial Disputes Act, 1947. It is unjust to deny employment. In similar cases semi-skilled workmen R. Kumaran, K. Rajendran, Jayaraman, Ibrahim Basha, and Mirza Iqbal Ali were made permanent employees, 3 casual labourers S. R. Sankaran, K. Murthy and K. K. Krishnamurthy were appointed as permanent employees of the Food Corporation of India. In the proceedings dated 15th May, 1979 of the Food Corporation of India, District Office, Bangalore, casual labourers were made permanent. The respondent recruited 15 persons through employment exchange. This respondent is bound by the circular No. 4-8/75-EP dated 11th February, 1976 and 7th September, 1977 which provide that all employees working in the Food Corporation of India as daily rated employees should be given appointment first in the direct recruitment. There are 10 employees who were in employment like the claimant-petitioner and who were taken back into service by the respondent, and those 10 employees have been confirmed and promoted. Therefore, an award may be passed directing the respondent to reinstate the claimant-petitioner into service with continuity of service from 1st November, 1977 and full back wages.

4. The respondent filed the following counter :

The Food Corporation of India is a statutory corporation formed by the Food Corporation of India Act, 1974. The allegation that the petitioner was appointed as Work Assistant on N.M.R. basis at Avadi in the construction and maintenance section with effect from 8th December, 1976 is substantially correct. It is not correct to say that work in the construction and maintenance section is permanent in nature. It is not a permanent establishment. The work is temporary, casual, and is only periodical. The workers are paid only at daily rates. The allegation that the petitioner was in continuous service for 325 days is denied. The petitioner has put in only 217 days work. Therefore, no notice of termination was issued to him. The respondent denies the averment that the respondent accepted the verdict of the conciliation officer to reinstate Mr. Ramakrishnan as a daily rated workman. It is denied that the petitioner has not

been issued notice of termination, and that no wages have been paid for the period of notice. The services of the petitioner were legally terminated and provisions of the Industrial Disputes Act, 1947 were duly observed and complied with. The petitioner is not entitled to any back wages. The respondent denies that after the petitioner's services were terminated, fresh hands were recruited and later made permanent. The principle "Last Come First Go" has been scrupulously followed. It is denied that the petitioner was victimised. The case of Kamakshi is of different nature as she was sponsored by the employment exchange. The allegation that 15 juniors to the petitioner were appointed on a regular basis when the petitioner was denied the same opportunity is denied. The cases of other persons are different. The circular No. 4-8/75-EP dated 11th February, 1976 and 7th September, 1977 have no application to the petitioner. These circulars apply to persons who were sponsored by the employment exchange. It is denied that there are vacancies in the respondent corporation. The petitioner is not entitled to claim reinstatement. It was held by the Jabalpur Tribunal that mere working for 240 days does not under any law whatsoever give any right to the worker to claim absorption and regularisation in service. Therefore, petitioner is not entitled to back wages and reinstatement into service or any other attendant benefits. Therefore, the petition may be dismissed.

5. The issues that arise for consideration are :

1. Whether the petitioner had worked for more than 240 days during the year preceding his non-employment?

2. If so, whether the petitioner is not entitled to be reinstated.

3. Whether the petitioner has been discriminated against any of the other workmen who were working under similar circumstances.

4. To what relief is the petitioner entitled?

6. Issues 1 to 4 : The case of the petitioner is that he was appointed as a Work Assistant under the category of Semi-Skilled on NMR basis by the respondent-Food Corporation of India on 8-12-76 and that he was in continuous service till 1-11-77. According to him, he had worked for 325 days, without any break between 8-12-76 to 29-10-1977. The petitioner contends that he was terminated from service without any notice and without any wages in lieu of notice and therefore this termination is a violation of Section 25-F of the Industrial Disputes Act. According to him, he was victimised by the respondent. The petitioner claims that certain other workers like him were employed, while he was not called back and that some of them were even regularised and promoted. Therefore, the petitioner contends that he was also discriminated against similar workers. The respondent on the other hand contends that petitioner had worked for 217 days only and therefore he is not entitled to any notice. The respondent also contends that the cases of others mentioned by the petitioner stand on a different footing and that the petitioner has not been either victimised or discriminated against others.

7. Firstly, I will consider the question whether the petitioner had worked for 240 days continuously during the period of one year preceding his non-employment. The petitioner has produced a certificate issued by the respondent-Food Corporation of India (Ex. W-1) wherein it has been mentioned that he had worked as a Work Assistant (Semi-skilled) on Nominal Master Roll basis in Food Corporation of India, Avadi, from 9-12-76 to 1-11-77. The allegation in the claim statement of the petitioner is that during the period from 8-12-76 to 29-10-77, he had worked continuously for a total period of 325 days. The respondent on the other hand has alleged in its counter that he had worked for 217 days only. The respondent claims that it includes holidays also. The respondent has not produced the master roll maintained by it. The Assistant Manager of the Civil Engineering Department of the respondent-Food Corporation of India was examined as MW1. He stated in his evidence that as per the master roll the petitioner had worked for 217-1/2 days only, that the said 217-1/2 days includes holidays, that the master rolls were produced at the time of the conciliation proceedings before the Assistant Labour Commissioner, and that the petitioner had perused them.

But, he admitted that since the muster roll is not available now, it has not been produced in this Court. The petitioner was examined as WW1. In his evidence he stated that including the 2nd Saturdays, sundays and other holidays, he had worked for more than 240 days. According to him, he had worked for 282-1/2 days between 9-12-76 and 1-11-77. He stated in his evidence that even before the conciliation officer, he had mentioned that he had worked for more than 240 days, that the respondent informed that he (petitioner) had worked for 217-1/2 days, but the respondent had not furnished the details before the conciliation officer. In these circumstances, the evidence of MW1 that the muster roll is not available now and therefore it has not been produced in this Court cannot be accepted. The respondent who maintains the records ought to have produced the same, especially when the same was produced before the Assistant Labour Commissioner. A perusal of the failure report sent by the conciliation officer (Ex. W-2) shows that the petitioner was supplied with particulars of his attendance during the period from 9-12-76 to 1-11-77 and that he had not disputed the figure of 217-1/2 days shown as total number of days actually worked by him including public holidays and sundays on which he was posted for duty and paid wages. It is also evident that the petitioner had contended that if all the intermining sundays national and festival holidays were also taken into account, it would work out to more than 240 days. From this it will be seen that though the petitioner had been supplied with particulars about his attendance, it is clear that the 217-1/2 days mentioned by the respondent included the days actually worked by the petitioner including holidays, and sundays, when he was actually posted for duty and was paid wages. It is also evident that the petitioner had contended that if all the sundays, and other holidays, like national and festival holidays are taken into account, it would work out to more than 240 days. Therefore, the contention of the respondent that the petitioner had perused the particulars of actual working days before the Conciliation Officer, that the same is not available now, and therefore it is not produced cannot be accepted. The failure to produce that document enables this Court to draw an adverse inference. If the document could be produced in the year 1983 before the Assistant Labour Commissioner it could certainly have been produced before this Tribunal in this proceedings which was commenced in the year 1984. Therefore, an adverse inference has to be drawn from the non-production of the muster roll by the respondent, because, if it had been produced, it would have been possible to find out the number of days actually worked by the petitioner, the number of sundays, festival and other holidays during the relevant period, and whether the petitioner had worked for more than 240 days during the relevant period. In this connection, the learned counsel for the petitioner relied upon the decision in H.D. Singh Vs. Reserve Bank of India (AIR 1986 SC 132). That was also a case where there was a dispute as to the number of days for which the workmen had worked. The worker wanted the relevant records to be filed by the Management, but they were not produced. It was held that in the absence of any evidence to the contrary an inference had to be drawn that the workman's case that he had worked for more than 240 days is true. In this case also, the petitioner herein filed Miscellaneous Application 121/91 on 8-11-91 seeking an order from this Court directing the respondent herein to produce apart from other documents, the list of all Saturdays, and sundays, and the muster roll of the petitioner for the period from 9-12-86. The respondent filed a counter stating that the petitioner has asked for the documents belatedly and if the petition is allowed, it will delay the proceedings, and that these documents are old and cannot be traced easily. But, this petition was ultimately allowed on 13-7-92. In spite of that, the respondent had not produced the muster rolls relating to the petitioner and the list of Saturdays and sundays for the relevant period. Of course, the detail regarding Saturdays and sundays can be ascertained every otherwise. But, the non-production of the muster roll certainly will affect the case of the petitioner. It may be that it relates to the period from 8-12-86 to 1-11-77, and this Industrial Dispute has been referred in the year 1984. But, it cannot be stated that the respondent cannot produce the document in view of the delay or that the respondent has been prejudiced by the delay, because Exhibit W-2 the failure report sent by the Conciliation Officer is dated 8-7-83 and it shows that the petitioner had made representations to the Conciliation Officer

on 7-1-83. During the Conciliation proceedings, the respondent had furnished the petitioner with the details regarding his attendance from 9-12-76 to 1-11-77. Therefore, when in the year 1983, the respondent could furnish the details with regard to the muster rolls, it means that the muster rolls were available at that time. This reference has been made in the year 1984. Therefore when the reference has been made in the very next year, the respondent cannot be heard to state that the muster roll is not available and therefore not produced. It is not as if the delay in the reference has prejudiced the respondent, and he is not able to produce the documents because of the delay, in as much as in the year 1983 the respondent had furnished the details regarding the attendance by the petitioner. So, the non-production of the muster roll by the respondent leads to an inference that the contention of the petitioner that he had worked for more than 240 days is true.

8. The learned counsel for the petitioner also relied upon the decision of the Hon'ble Supreme Court in the workmen of American Express Vs. Management of American Express (1985 II LLJ 539) it was a case where the workmen raised an Industrial Dispute contending that the concerned employee had actually worked under the employer for 275 days during the period of 12 months preceding the termination and for this purpose, the workman included and counted sundays and other paid holidays as days on which the employee had actually worked under the employer and therefore the termination was violation of Section 25-F of the Industrial Disputes Act. This claim was resisted by the Management by contending that sundays and other paid holidays should not be included and counted as days on which the employee had actually worked under the employer and therefore the concerned employee was not in continuous service for one year as prescribed by Section 25-F read with 25-B of the Industrial Disputes Act. The Tribunal to whom the dispute was referred for an adjudication upheld the contention of the Management. It was held that "The Expression" "actually worked under the employer" cannot mean those days only when the workman worked with the hammer, sickle or pen but must necessarily comprehend all those days during which he was in the employment of the employer for which he had been paid wages either under express or implied contract of service or by compulsion of Statute, Standing Orders, etc. The explanation to Section 25-B(2) is only clarificatory and cannot be used to limit the expense of the main provision. It cannot be said that only those days which are mentioned in the explanation should be taken into account for the purpose of calculating the days on which the workmen had actually worked though he had not so worked and no other days."

9. As pointed out already, MW1 stated in his evidence that the petitioner had worked for 217-1/2 days including holidays. The petitioner as WW1 has stated that if the festival holidays, national holidays, restricted holidays second Saturdays and Sundays are included, he would have worked for 282-1/2 days. I have also already pointed out that even before the Conciliation Officer, he had stated that by including the public holidays and sundays, the number of days worked by him would be more than 240 days. Exhibit W-2 shows that as per the calculation of the respondent, they had included public holidays and sundays on which he was posted for duty and paid wages only. Therefore, if the other intervening sundays, and national and festival holidays are also taken into account it will be evident that the petitioner must have worked for more than 240 days.

10. Another contention put forward by the respondent is that the petitioner cannot be employed in as much as the Food Corporation of India has issued a Circular that all casual employees employed after 25-1-76 cannot be considered. This circular has been marked as Exhibit M-2. But, the petitioner contends that there cannot be such a discrimination. He also contends that there have been certain cases of employees like him who were not only taken back but also whose services were regularised. The petitioner has filed Ex. W-6 dated 15-12-87, to show that about 35 persons who were engaged on NMR basis (daily wages basis) were appointed to the post of messenger, on regular basis with effect from 20-11-76. The petitioner also relied Exhibit M-4 to show that Ramkishan and 2 others who were also engaged on NMR basis sponsored by employment exchange

were taken for employment, in the year 1977. The fact that they were sponsored by the employment exchange will not make any difference. There is nothing to show that these persons were employed on NMR basis prior to 25-1-76. Therefore, the contention of the petitioner that he has been discriminated against has also to be accepted.

11. The learned counsel for the respondent relied upon the decision in *Damodharan, C. Vs. The Regional Manager, Food Corporation of India* (99 L.W. p. 434). That was a case where a temporary employee's services were terminated under the Food Corporation of India Regulation. He approached the Commissioner of Workmen's Compensation by way of an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947. It was held that the Food Corporation of India Regulations reserved the express power of termination of services of a temporary employee with the corporation. But, the present case does not arise under Tamil Nadu Shops and Establishments Act. The contention of the petitioner is that he had worked as a casual labourer for more than 240 days and therefore he should not have been retrenched from service without complying with the provisions of Section 25F. Therefore, this decision relied upon by the respondent will not help it in this case.

12. The learned counsel for the respondent contended that the petitioner is guilty of laches. Of course, the termination was in the year 1977, and the petitioner had approached the Assistant Labour Commissioner in the year 1983 and this reference has also been made in the year 1984. But, from the mere fact that there has been delay, it cannot be stated that the petitioner should be denied any relief. As pointed out already, the respondent has not been prejudiced and at least it has not been proved that the respondent is prejudiced by the delay. In such circumstances, it cannot be stated that the Industrial Dispute should fail in view of the delay. Therefore, taking into consideration all these circumstances, I find that the petitioner is entitled to be reinstated into service with back wages and continuity of service.

13. In the result, an award is passed directing the respondent to reinstate the petitioner D. Nandakumar into service with continuity of service and back wages from 1-11-77. No costs.

Dated, this the 1st day of February, 1994

THIRU K. SAMPATH KUMARAN, Industrial Tribunal.

WITNESSES EXAMINED

For workman :

W.W. 1 : Thiru B. Nanda Kumar.

For Management :

M.W. 1 : Thiru S. Pakkiriswamy.

DOCUMENTS MARKED

For Workman :

Ex. W-1/17-12-77.—Certificate issued to the Petitioner-Workman B. Nanda Kumar.

Ex. W-2/8-7-83.—Conciliation failure Report.

Ex. W-3/6-5-87.—Letter from Personnel Manager, F.C.I. to the Zonal Manager, Sr. Regional Manager/Joint Manager (Post Operation) P.C.I. regarding recruitment of Casual daily rated employees and regularisation (Xerox copy).

Ex. W-4/24-8-78.—Appointment order for the post of Khalasis (Xerox copy).

Ex. W-5/17-12-77.—Certificate issued to the Petitioner-workman (Xerox copy).

Ex. W-6/15-12-87.—Office order for appointment of NMR staff as Messenger-(Depot) on regular basis (Xerox copy).

Ex. W-7/22-12-75.—Circular showing holidays for the year 1976 (Xerox copy).

Ex. W-8.—List of holidays for the year 1977 (Xerox copy).

Ex. W-9/15-2-91.—Office order for appointment to the post of work Assistant (Xerox copy).

Ex. W-10/17-11-89.—Office order for appointment of NMR staff as Work Assistant on regular basis (copy).

Ex. W-11/17-11-89.—Office order for appointment of NMR staff as Khalasi on regular basis. (copy).

For Management :

Ex. M-1/4-2-76.—Notification by the Management-Corporation amending Food Corporation of India (Staff) Regulations (copy).

Ex. M-2/11-2-76.—Circular issued by the Management, Corporation clarifying Ex. M. 1 (copy).

Ex. M. 3/30-11-77.—Office order regarding engagement of nominal muster roll (copy).

Ex. M. 4/12-12-77.—Order for engagement of candidates on Nominal Muster Roll at Food Grain Godown, Food Corporation of India, Coimbatore (copy).

Ex. M. 5.—Copy of letter no. 1/8/78-Estt. I, dated 31-6-78 received from Zonal Manager, Food Corporation of India, Madras-6 addressed to the Senior Regional Manager, Food Corporation of India, Madras-18 regarding appointment/regularisation of services of workchanged daily rated engineering workers (Xerox copy).

Ex. M. 6/22-11-90.—Circular issued to the Management Corporation regarding economy in expenditure in the working of the Food Corporation of India.

नई दिल्ली, 19 अप्रैल, 1994

का.आ. 1182.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 अनुसूचन में, एम.सी.सी. एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-4-94 को प्राप्त हुआ था।

[सं. एल-22012/315/92-आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 19th April, 1994

S.O. 1182.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workmen which was received by the Central Government on 18-4-199.

[No. I-22012/315/92-IR. (C. II)]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD.

PRESENT :

Sri Y. Venkateshulam, M.A., B.L., Industrial Tribunal-I.

Dated : 28th day of March, 1994

INDUSTRIAL DISPUTE NO. 85 OF 1992

BETWEEN

Boorla Ramulu,

Petitioner.

AND

General Manager,

R.G. I, S.C. Co. Ltd.,

Godavari Dist. Karimnagar.

Respondent

APPEARANCES :

Sri K. Vasudeva Reddy Advocate for the Petitioner.
M/s. K. Srinivasa Murthy & G. Sudha, Advocates
for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-22012/315/92-IR(C.II) dt. 9-12-1992 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the management of M/s. Singareni Collieries Company Limited, R.G.I. Godavarikhani and their Workmen to this Tribunal for adjudication.

"Whether the management of M/s. S.C. Co. Ltd., action in dismissing the services of Sri Boorla Ramulu, Ex-Shunting Muccaddam, DSP-I, R.G.I. Godavarikhani, is legal and justified? If not, to what relief the workman is entitled to?"

This referred was registered as Industrial Dispute No. 85 of 1992 and notices were issued to the parties.

2. The workman filed their claim statement on 20-4-1993. The dispute was posted for counter of the Management on 14-5-1993 but no counter was filed by the Management after several adjournments. Finally on 10-11-1993 the Respondent-Management filed Memo stating that the matter was settled out of Court. Settlement memo was also filed. For notice to other side hearing posted to 1-2-1994. The case was posted from time to time since 1-2-1994 and finally on 16-3-1994 when the matter is called, the Advocate for the Petitioner and the Petitioner are not present. There is no representation on their side. On 10-11-1993 the Respondent filed Memo stating that the matter was settled out of Court. When both the parties had compromised the matter among themselves and out of the Court, this Tribunal is of the opinion that the terms of compromise entered into by them are fair and proper and in their own interest, and it is recorded. Hence an Award in terms of the compromise dated 30-8-1993 is passed and a copy of it is annexe to this Award.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 28th day of March, 1994.

Sd/-

Y. VENKATACHALAM, Industrial Tribunal
Appendix of Evidence.

NIL

Memorandum of Settlement arrived at on 30-8-1993, between the Management of Singareni Collieries Company Limited, Ramagundam Area-I, Godavarikhani and their workman represented by Andhra Pradesh Colliery Mazdoor Sangh (INTUC), Godavarikhani.

S/-

Management Representatives

1. Sri A. Pulla Reddy,
Personnel Manager,
S.C. Co. Ltd., R.G.I. Area,
Godavarikhani.
2. Sri V. Datta Prasada Rao,
Dy. Personnel Manager,
S.C. Co. Ltd., R.G.I. Area,
Godavarikhani.

Workman Representatives

1. Sri K. Ramakrishna Rao,
Working President,
Andhra Pradesh Colliery
Mazdoor Sangh (INTUC),
Godavarikhani.
2. Sri R. Raja Ram, Vice-
President, Andhra Pradesh
Colliery Mazdoor Sangh
(INTUC) Godavarikhani
3. Sri Boorla Ramulu,
Ex-Shunting Muccaddam,
CSP-I, Godavarikhani.

The Andhra Pradesh Colliery Mazdoor Sangh (INTUC), Godavarikhani, raised a dispute demanding re-instatement of Sri Boorla Ramulu, Ex-Shunting Muccaddam, CSP-I, Godavarikhani. The Conciliation before the Asst. Labour Commissioner (Central), Mancherial ended in failure and the case was referred to Industrial Tribunal (C), Hyderabad for adjudication and the dispute is pending before the Industrial Tribunal (C), Hyderabad, as I. D. No. 85/92. After the failure of the Conciliation Proceedings, the Union represented several times, requesting the Management to consider the case of the ex-workman for re-instatement.

The Management contended that the ex-workman was dismissed for a proved misconduct and he was awarded punishment on several occasions in the past and there was no improvement in the attitude of the ex-workman and hence the case of the ex-workman does not deserve any consideration.

However, in view of the frequent representations of the Union and in order to have cordial industrial relations, an understanding has been reached between the parties to arrive at a Settlement on the following terms.

TERMS OF SETTLEMENT

1. The Management agreed to re-appoint Sri Boorla Ramulu, w.e.f. 1-9-1993.
2. On re-appointment, Sri Boorla Ramulu, will be allowed the Category and basic pay which he was drawing on the date of dismissal.
3. The intervening period from the date of dismissal to the date of re-appointment will be treated as leave on loss of pay for the purpose of gratuity.

The Union and the ex-workman are fully satisfied with the above terms and hence consider that the dispute is fully resolved. The Union and ex-workman have agreed to file a copy of this Settlement before the Industrial Tribunal (C), Hyderabad, praying the Honble Industrial Tribunal (C), Hyderabad to pass an Award accordingly.

SIGNATURES OF THE PARTIES

Management Representatives

Workman Representatives

Sd./-

Sd/-

(A. PULLA REDDY)

(K. RAMAKRISHNA RAO)

(V. DATTA PRASADA RAO)

(R. RAJA RAM)

(BOORLA RAMULU)

Sd./-

WITNESSES :-

(S. T. RAVINDRAN)

P.O. Personnel Dept., R.G.I. Area,
Godavarikhani.

Sd./-

(K. AGA RAO)

Office Supdt.,
Personnel Dept., R.G. I Area,
Godavarikhani.

Place : Godavarikhani,

Dated : 30-8-1993

नई दिल्ली, 19 अप्रैल, 1994

का.प्र. 1183.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, एस.सी.सी. एल. के प्रबंधन के संघर्ष नियोजकों और उनके कर्मचारियों के बीच संबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-4-94 को प्राप्त हुआ था।

[सं. एल-22012/50/90-आई आर सी-III]

राजा राम, ईस्क अधिकारी

New Delhi, the 19th April, 1994

S.O. 1183.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workman, which was received by the Central Government on the 18-4-94.

[No. L-22012/50/90-IR (II)]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT:

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.
Dated : 22nd day of March, 1994
Industrial Dispute No. 39 of 1990

BETWEEN

The Workmen of S.C.Co. Ltd.,
Ramagundam Division, P.O.
Godavari Khani, Karimnagar Dist. (AP) ..Petitioner.

AND

The Management of S.C.Co. Ltd.,
Ramagundam Division P.O.
Godavari Khani, Karimnagar Dist. (A.P) ..Respondent.

APPEARANCES:

S/Shri G. Bikshapathi, G. Vidyasagar, V. Vishwanatham
and N. Vinesh Raj, Advocates—for the Petitioner.

M/s. K. Srinivasa Murthy and G. Sudha, Advocates
for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-22012(50)/90-IR(C.II), dt. 3-8-1990 referred the following dispute under Section 10(1)(d) (2A) of the Industrial Disputes Act, 1947 between the Management of Singareni Collieries Company Limited, Ramagundam Division and their workmen to this Tribunal for adjudication.

"Whether the action of the Management of M/s. Singareni Collieries Co. Ltd., Project Ramagundam Division P.O. Godavari Khani Dist. Karimnagar (A.P) in imposing the penalty of dismissal w.e.f. 14-3-1989 on Sri Boora Srihari, Clerk Grade-II, GDK II A Incline is justified? If not, to what relief the workman concerned is entitled?"

This reference was registered as Industrial Dispute No. 39 of 1990 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner-workman read as follows :—The Petitioner submits that he was appointed as Badli worker in Singareni Collieries Company Limited on 1-4-1983. Thereafter, he was promoted as General Mazdoor at GDK-IIA Incline and his services were confirmed in the same mines in Cat-I wages by office order dt. 18-2-1987 w.e.f. 3-12-1986. While so, the Company issued a Notification calling for applications from the Graduates for appointment to the post of Clerk Grade II in the Company. The petitioner appeared for the said post and succeeded and got merit in the test. In pursuance of the ranking given in the test, the petitioner was appointed as Clerk Grade II by an order dt. 25-5-1988 and posted to GDK-IIA Incline. That the workman was issued with a charge sheet dt. 9-9-1988. With the charge sheet, the Petitioner was suspended pending enquiry with immediate effect and directed to submit explanation within the two days of receipt of this charge sheet. The petitioner submitted his explanation to the charge sheet on 10-9-1988 and 7-10-1988

1114 GI/94-3,

denying the charges. Thereafter an enquiry was conducted. Moreover, the said alleged misconduct of the petitioner does not amount to any act of Standing Orders 16(2). The Respondent has also not given any reasons for framing the charge. He has also not furnished a copy of the proceedings along with the order of dismissal. No show cause notice was also given to the Petitioner before imposing the punishment of dismissal from service. None of the witnesses from the concerned University was examined. It is submitted that the said dismissal order is illegal. In the charge sheet dt. 9-9-88, the Respondent nowhere stated that how did he come to conclusion that the Degree certificate submitted by the Petitioner is a faked one. In any event the punishment of dismissal is highly excessive and grossly disproportionate to the gravity of misconduct alleged to have committed by the Petitioner. It is therefore prayed that the Hon'ble Court may be pleased to set aside the order of dismissal dt. 9-3-89 as illegal and unjustified and consequently pass an award directing the Respondent to reinstate the workman into service with full back wages and other attendant benefits and grant reliefs as this Hon'ble Court deems fit and proper.

3. The brief facts of the counter filed by the Respondent read as follows:—It may be noticed to get over the fraudulent acts committed by the Petitioner he has chosen to state certain material facts in wrong perspective. It may be noticed at the time of appointment as Clerk he submitted the Graduation Certificate and the Respondent bonafidely believing the certificate and then called the employee for interview and gave the appointment. Later the Respondent came to know that the Certificate submitted by him is a fake one and not genuine which resulted in issuing him the charge sheet dt. 9-9-1988. It is true that this petitioner was suspended and disciplinary action was initiated and the petitioner was called upon to submit the explanation and the petitioner has submitted his explanation on 7-10-1988 denying the charges. It is further submitted according to the Standing Orders it is not necessary for the Management to furnish the findings of the Enquiry Officer. The Respondent looked into the entire record of Sri Boora Srihari and Enquiry findings independently applied its mind and passed the order dt. 9-3-1989. He cannot shift the onus of proving the genuineness of the certificate on to the Management. Filing a fake certificate for the purpose of promotion clearly indicates that the workman for his own interest can go to any extent to create the document. The petitioner Sri Boora Srihari not only played fraud against the management, but also played fraud against the University and the public at large. The employee who fabricates and creates the fake certificates and try to earn the promotions cannot be relied; no management can have confidence in such employee to entrust the work. These are not the cases where the Court normally interferes under Section 11A and adopts lenient attitude. There are no merits in the Petitioner's case and the petitioner is not entitled for reinstatement with full backwages and other attendant benefits as prayed for. In view of the above mentioned facts this Hon'ble Court may be pleased to hold that the action of the management is justified in dismissing the employee by the order dt. 9-9-1988 and pass orders as this Hon'ble Court deems fit.

4. The point for adjudication is whether the action of the Respondent in imposing the penalty of dismissal w.e.f. 14-3-89 on Sri Boora Srihari is justified or not?

5. Before going into the merits of the case, this Tribunal decided this case on the validity of the domestic enquiry. On 14-2-1994 this Tribunal passed the order holding that the domestic enquiry was held properly and is not vitiated.

6. Now this Tribunal has to decide the case mainly under Section 11-A of the Industrial Disputes Act whether the dismissal is shockingly disproportionate to the gravity of the misconduct committed by the Petitioner workman. In this case the petitioner workman was issued with the charge sheet dt. 9-9-1988 with the following charges:

.....
.....
It is now reported that the degree certificate submitted by you is fake and you have thus secured the post of clerk in our Organisation by dishonest means namely producing fake document.
.....

It is seen from the above that the Petitioner has submitted a fake degree certificate and got the post of Clerk in the Company. Now this Tribunal has to see whether the Degree Certificate submitted by the Petitioner workman to the Respondent-Management is genuine or not. The statement of Sri T. Venkateswarlu, Management witness recorded on 5-12-1988 in the domestic enquiry stated that a letter was written to the Controller of Examinations, Osmania University, Hyderabad enclosing the degree certificates of 42 candidates who obtained their degree from Osmania University with a request to verify the genuineness or otherwise of those certificates and send the reply in this regard. Sri B. Srihari is one among the above 43 candidates. The letter No. is CVO/Vig/88/55, dt. 29-7-1988. The Secretary, Board of External Examinations, Osmania University sent his reply bearing No. 1661/Ext/Exams./88 dt. 30/31-8-1988 after necessary verification of the certificates and he informed that the B.Com. degree certificate of Sri B. Srihari with Hall Ticket No. 9971 is not genuine." A perusal of the letter No. 1661/Ext. Exam/88 dt. 30/31-8-1988 which is marked as Ex. M13 would clearly indicate that the certificate of Sri Boora Sri Hari S/o Malliah termed as NOT GENUINE. So I find that the Respondent Management was justified in issuing Charge Sheet dt. 9-9-1988 stating that the degree certificate submitted by the Petitioner is fake one and secured the post of a Clerk in the Respondent Company by dishonest means namely producing fake documents. It is pertinent to note that the Petitioner-workman has submitted his explanation to the charge sheet dt. 10-9-1988 wherein he has stated that he was cheated by a person for the degree certificate and he is searching for the cheater. This clearly shows that the degree certificate might have been purchased fraudulently. From the above facts, I find that the misconduct committed by the Petitioner-workman is very grave and serious and the Respondent-Management was right in issuing dismissal order dt. 9-3-1989 as legal and justified. Hence I find that the petitioner workman is not entitled to be reinstated into service and no relief can be ordered.

7. In the result, the action of the Management of M/s. Singareni Collieries Company Limited, Project, Ramagundam Division, P.O. Godavarikhani, Dist. Karimnagar (AP) in imposing the penalty of dismissal w.e.f. 14-3-1989 on Shri Betra Shrihari Clerk Grade-II, GDE IIA Inclne is justified. The workman concerned is not entitled to any relief.

Award passed accordingly.

Typist to my dictation, given under my hand and the seal of this Tribunal, this the 22nd day of March 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence.

Witnesses Examined
for the Petitioner:
NIL

Witnesses Examined
for the Respondent:
M.W1 P. Harigopal.

Documents marked for the Petitioner:

NIL

Documents marked for the Respondent:

- Ex. M1 29-11-88—Appointment letter given to M.W1.
- Ex. M2 9-9-89—Charge Sheet issued to the Petitioner-Workman
- Ex. M3 12-9-88—Explanation submitted by the Petitioner-workman.
- Ex. M4 7-10-88—Another explanation submitted by the Petitioner-Workman.
- Ex. M5—Enquiry Proceedings.
- Ex. M6 to M.13—Documents submitted by the Management before the enquiry officer.
- Ex. M14—Enquiry report.

Y. VENKATACHALAM, Industrial Tribunal-I

नई दिल्ली 19 अप्रैल, 1994

का.प्र. 1184.—औद्योगिक विवाद विनियम, 1947 (1947 का 14) की धारा 17 के प्रनुसरण में, एम.सी.सी. एल. के प्रबंधन के संवद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचद को प्रकाशित करती है जो केन्द्रीय सरकार को 18-4-94 को प्राप्त हुआ था।

[सं. एल-42012/135/86 डी-II (बी)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 19th April, 1994

S.O. 1184.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workmen, which was received by the Central Government on the 18-4-1994.

[No. I-42012/135/86-D.II(B)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT
HYDERABAD

Present :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal.
Dated : 15th day of March, 1994

INDUSTRIAL DISPUTE NO. 60 OF 1992

BETWEEN

Bandi Moulali Sahab

AND

1. The Senior Regional Manager,
F.C.I., Hyderabad

2. The District Manager,
Food Corporation of India,
Kurnool

.. Respondents

Appearances :

M/s. G. Bikshapathi, G. Vidyasagar, V. Vishwanatham,
N. Vinesh Raj and G. Ravi Mohan, Advocates for
the Petitioner.

Sri K. Satyanarayana Rao, Advocate for the Respondents.

AWARD

The Government of India, Ministry of Labour by its Order No. I-42012/135/86-D.II(B), dt. 26-8-1992 referred the following dispute under Section 10(1)(d) (2A) of the Industrial Disputes Act, 1947 between the Management of Food Corporation of India, Kurnool and their workman to this Tribunal for adjudication :

"Whether the action of the Management of Food Corporation of India, Kurnool (A.P.) in terminating the services of Sri Bandi Moulali Sahab ex-daily rated watchman, is justified ? If not, to what relief the concerned workmen is entitled for ?"

This reference is registered as Industrial Dispute No. 60 of 1992 and notices were issued to both the parties.

2. The brief facts of the claims statement filed by the Petitioner-Workman read as follows :—It is respectfully submitted that the Petitioner was appointed as Watchman as daily wage basis. During the years 1973 to 1977, there was heavy procurement programme consequent to the bumper crops in Andhra Pradesh. However, the recruitment in all categories of posts of Watchman, Sweepers, Assistant (Depot) etc. was

done on daily rate basis. Having realised that the appointment of employees on daily rate basis is not proper, the Food Corporation of India has issued instructions to regularise the services of the daily rated workman from 8-1-1976 onwards. In respect of employees who were terminated from services, and amendment was introduced to the Food Corporation of India Employees Services Regulations in 1976 to the effect that the employees who were recruited on daily rate basis should also be considered for appointment against direct recruitment along with the candidates sponsored by the Employment Exchange. It is submitted that the Petitioner worked as Watchman from 25-6-1976 to 19-4-1977 in Timmancherla Depots and his services were disengaged from 19-4-1977, without any notice or any valid reasons. Even since the disengagement the petitioner has been making representations personally and also through the Union to consider the candidature for regular appointment in pursuance of the amendment as stated supra. But there was no response. It is submitted that the impugned order of disengagement is illegal and arbitrary. The Petitioner made several representations but the management have not considered the same. It is submitted that the termination is illegal, arbitrary and unwarranted; whereas the workman appointed subsequent to the petitioner's appointment were continued but the services of the petitioner were terminated. The alleged action is also violative of Section 25-H of the I.D. Act. The Respondent has not maintained the seniority list and has not followed the procedure for retrenchment under Section 25-G of the I.D. Act. It is therefore prayed that the Hon'ble Court may be pleased to hold that the disengagement of the petitioner w.e.f. 19-4-1977 as illegal and unwarranted and consequently pass an Award directing the Respondent-Management to reinstate the petitioner into service with all consequential benefits and pass order as this Hon'ble Court deems fit and proper.

3. The brief facts of the counter filed by the Respondent read as follows :—The Respondent submits that the Petitioner worked as Watchman from 25-6-1976 to 19-4-1977 in hired godowns but the Petitioner never worked for 240 days. The contention of the petitioner that his services were disengaged from 19-4-1977 without any notice or valid reasons is not true and correct. The Respondent did not engaged the petitioner as there was no work. The petitioner never put in 240 days of service in a year as such the applicability of the provisions of the I.D. Act does not arise. The Petitioner never made any representation after his disengagement. The Petitioner is aware that the godowns where he worked were de-hired and that there was no work. The allegation of the petitioner that the action of the Respondent is in violation of Section 25-H of the I.D. Act is not true and correct. The petitioner worked only as daily rated workman and that too for a very short period as such the question of violation of Sections 25-H and 25-G of the I.D. Act does not arise. The petitioner has never been sponsored by the Employment Exchange. As such the question of considering the petitioner's case for regular appointment does not arise. In view of what has been stated above the Respondent herein prays that this Hon'ble Tribunal may be pleased to reject the reference and pass a NIL award.

4. The point for adjudication is whether the action of the Respondents in terminating the services of Sri Bandi Moulali Saheb is justified or not?

5. W.W1 was examined on behalf of the Petitioner-workman and marked Exs. W1 on its side. M.W1 was examined on behalf of the Respondent and no documents were marked on its side.

6. W.W1 is Bandi Moulali Saheb. He deposed that he is the concerned workman in this case. He worked in the Respondent Corporation from 25-6-1976 to 19-4-1977. Ex. W1 is his service certificate issued by the Respondent Corporation. He worked as Watchman. He worked continuously including holidays i.e. weekly offs and National holidays. He was not given any notice or notice pay nor compensation at the time of his termination. He represented to the Management for reinstatement. Whenever there is vacancy. He will be taken back into service. On that pretext, they were asked him to come again. That he was taken. Even after his termination, his juniors are continued and regularised. He prays this Hon'ble Tribunal to reinstate him into service with all other attendant benefits.

7. M.W1 is S. Vidya Sagar. He deposed that he knows the Petitioner. He is working in Kurnool as Asst. Manager. in Respondent Corporation. The petitioner worked in Kurnool District. He worked on daily rated Watchman. He worked at Timmencherla. He worked from 25-6-1976 to 19-4-1977. He did not work 240 days continuously. They disengaged the petitioner from 19-4-1977 afternoon as the hired godown are denied. He did not raise any dispute after 1977. He raised the dispute after 1986, before Asst. Labour Commissioner (Central). He is not entitled to any relief.

8. The allegation of the Petitioner workman is that he was appointed as Watchman on daily rate basis, that in respect of employees who were terminated from service, an amendment was introduced to the Food Corporation of India Employees Service Regulations in 1976 to the effect that the employees who were recruited on daily rate basis should also be considered for appointment against direct recruitment along with the candidates sponsored by the Employment Exchange. The contention of the Respondent on the other hand is that the Petitioner worked as Watchman from 25-6-1976 to 19-4-1977 in hired godowns but the petitioner never worked for 240 days. The contention of the petitioner that his services were disengaged from 19-4-1977 without any notice or valid reasons is not true and correct. The Respondent did not engage the petitioner as there was no work. that the petitioner has never been sponsored by the Employment Exchange. As such the question of considering the petitioner's case for regular appointment does not arise.

9. At the very outset, I would like to mention that the Petitioner workman has marked Ex. W1 the attendance certificate wherein it is shown that the Petitioner workman has worked from 25-6-1976 to 19-4-1977 at Timmancherla Depot. It is seen that the Petitioner-workman for nearly 300 days in a continuous one year. The contention of the Respondent was that the petitioner workman did not work for 240 days. I do not agree with the contention of the Respondent Corporation that the petitioner workman did not worked for more than 240 days continuously. There is no merits to the contention of the Respondent-Corporations. The Petitioner workman cited a Gazette Notification in their claim statement which I am extracted below :

"Provided further such of the employee who were recruited on daily rate basis for periods of less than 3 months on purely temporary basis and whose services have been retained after allowing periodical breaks shall also be eligible to be considered for appointment against the direct recruitment along with candidates sponsored by Employment Exchange."

It is clear from the above Notification that if the employees who were recruited on daily rate basis for periods of less than 3 months on purely temporary basis and whose services have been retained after allowing periodical breaks shall also be eligible to be considered for appointment against the direct recruitment along with the candidates sponsored by Employment Exchange. Herein the Petitioner worked for more than three months and worked continuously for nearly 300 days in a continuous one year. I find that the Petitioner workman is entitled to be reinstated in service with effect from the date of disengagement i.e. from 19-4-1977 onwards and that the disengagement by the Respondent Corporation is illegal and arbitrary.

10. In the result, the action of the Management of Food Corporation of India, Kurnool, A.P. in terminating the services of Sri Bandi Moulali Saheb, ex-daily rate Watchman, is not justified. The Petitioner workman is entitled to be reinstated into service from the date of disengagement i.e. from 19-4-1977 with all consequential benefits i.e. back wages, continuity of service etc.,

Award passed.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 15th day of March, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I.

Appendix of Evidence

Witnesses Examined
for the Petitioner :

W. W1 Bandi Moulali Saheb

Witnesses Examined
for the Respondent :

M. W1 S. Vidya Sagar.

Documents marked for the Petitioner :

Ex. W1 Service Certificate issued to the Petitioner by the
Asstt. Manager, F.C.I. Timmencherla Depot.
Documents marked for the Respondent :

NIL

INDUSTRIAL TRIBUNAL-I

नई दिल्ली, 19 अप्रैल, 1994

का.अ. 1185.—औद्योगिक विवाद अधिनियम, 1947
(1947 का 14) की धारा 17 के अनुसरण में एस.सी.सी.
एन. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के
बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार
औद्योगिक अधिकरण हैदराबाद के पंचपट को प्रकाशित करती
है जो केन्द्रीय सरकार को 18-4-94 को प्राप्त हुआ था।

[मं. एन-22012/223/88-डी 4 (बी)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 19th April, 1994

S.O. 1185.—In pursuance of Section 17 of the Industrial
Disputes Act, 1947 (14 of 1947), the Central Government
hereby publishes the award of the Industrial Tribunal Hydera-
bad as shown in the Annexure in the industrial dispute bet-
ween the employers in relation to the management of S.C.C.
Ltd. and their workman, which was received by the Central
Government on the 18th April, 1994.

[No. L-22012/223/88-DIV (B)]

RAJA LAL, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT
HYDERABAD

Present :—Sri Y. Venkatachalam, M.A., B.L.,

Industrial Tribunal-I

Dated : 15th day of March, 1994

INDUSTRIAL DISPUTE NO. 47 OF 1989

Between :

The Workmen of the Singareni
Collieries Company Limited,
Mandamarri.

.. Petitioner.

AND

The General Manager, Singareni
Collieries Company Limited,
Mandamarri

.. Respondent.

Appearances :—

M/s. G. Vidyasagar, V. Vishwanatham, N. Vinesh Raj &
P. Giri Krishna, Advocates for the Petitioner.

M/s. K. Srinivasa Murthy, G. Sudha and Mitra Das,
Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Or-
der No. I-22012(223)/88-DIV.B, dt. -6-1989 referred

the following dispute under Section 10(1)(d)(2A) of the Indus-
trial Disputes Act, 1947 between the Management of Singareni
Collieries Company Limited, Mandamarri to this Tribunal for
adjudication :

"Whether the action of the Management of M/s. S. C.
Co. Ltd., Mandamarri in terminating services of Sri
Bandi Posham, Trammer, KK-1 Incline w.e.f.
1-7-1987 is justified? If not, to what relief the work-
man concerned is entitled?"

This reference is registered as Industrial Dispute No. 47 of
1989 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Pet-
itioner-workman read as follows: It is submitted that in the
Singareni Collieries, the age retirement rules effect from 1960,
but it was not implemented upto 1964 Sri Bandi Posham was
appointed in the Company on 23-6-1962 when that time he
was sent for physical fitness only. After physical fitness he
was appointed in the Company without recording his age.
For the fault of the management, they have rectified in 1969
by taking his thumb impression on a typed proforma illegally
and the proforma was attached with his service book. His
age was not assessed by the Medical Board or Medical Officer
at his termination but without assessing his age, illegally
terminated. If Sri Bandi Posham appointed after implementa-
tion of age retirement rules, the management have to follow
as per the age retirement rules Section 3(i) but not followed.
If he appointed before implementation of age retirement rules
the management to follow the age retirement rules section 3
(iv & vi) is also not followed in his case. It is proved that in
this case the management not assessed his age during his ser-
vice in the Company. Sri Bandi Posham was appointed in the
Company on 23-6-1962. His age was 30 years at the time
of his appointment. His age was recorded in his Bonus card
as 30 years as on 23-6-1962 issued by the Management to the
party after his appointment. In 1975 the Management was
issued the Antena Card (Identity Card) recorded his age as
35 years as on 23-6-1962. In the variation of his age in
Bonus card and Antena Card, the party represented to the
management initially when the management was handed over
the two above cards. They kept with them. Again the manage-
ment alleging now that the bonus card is altered the figures
by the worker. But the management refused to give the card
to the worker. We got doubt that the alteration were made
by the management in the Card. In 1969 the management has
taken thumb impression on a typed proforma and attached
the same to the service book. It is also proving that his age
is not assessed by any Medical Officer or Medical Board as
per the age retirement rules. The age of the worker (Sri
Bandi Posham) is stating that 35 years by the Management
and 30 years by the worker at the time of his appointment.
It is not a dispute which is correct. As per the agreements,
age retirement rules and company circulars, before termination
of a worker, the worker should sent for assessment of his
age by Medical Board/Medical Officer. In the above case
the management has not following the same but terminated
simply with their own decision as the worker is completed
60 years age. Hence Sri Bandi Posham may be referred to
Medical Officer/Medical Board before termination as per the
above agreement. If not it is proving that without referring
to the Medical Officer and terminating is illegal.

(1) The Management not honoured the Clause '3' of
age retirement rules and followed Clause '4'.

(2) It is proving that the Memorandum of settlement
dated 26th February, 1965 that the age records in
the Company of the works are not correct.

(3) It is proved that the Memorandum of settlement dated
17th September, 1968 and CPO's circular dated
26th October, 1983 that any employee contesting
his age record is wrong, the management has to sent
the worker to the Medical Board/Medical Officer, it
is evident that age records are wrong in the Com-
pany. Under these circumstances it is prayed that the
Hon'ble Tribunal may please be ordered to direct
the respondent to take Sri Bandi Posham on duty
immediately and pay the back wages from the date
of his termination until he is taken on duty.

3. The brief facts of the counter filed by the Respondent
read as follows: It is submitted that the workman in dispute,

Sri Bandi Posham, was initially appointed on 23rd June, 1962 as Coal Filler and subsequently promoted as Trammer. The allegation that the age retirement rules effect in the year 1960 were not implemented upto the year 1964 is not correct. It is not open to the Unions at this stage to raise dispute on the alleged ground that between 1960 and 1964 age retirement rules were not implemented by the Respondent and the petitioner is put to strict proof or the allegation made with regard to the alleged non-implementation of the settlement. The allegation that Sri Bandi Posham at the time of his appointment on 23rd June, 1962 was sent for Physical Fitness only and not for age determination is not correct. In fact Sri Bandi Posham could not produce any certificate with regard to his age at the time of joining in the Company, he was examined by the Medical Officer according to the rules in vogue at that time, and his age was determined as 35 years as on 22nd June, 1962 before joining as Coal Filler in the services of the Company and the same has been recorded in all his service records and also in Form 'B' Register and such other statutory records under the labour laws as well as under Coal Mines Regulations. The allegation that because of the fault of the management, they have rectified the same in 1969 by taking his thumb impression on typed proforma illegally and the proforma was attached with his service book is totally false. The allegation that without assessing his age, illegally he was terminated is not correct. This is not a case of termination. The allegation that Sri Bandi Posham was appointed after implementation of age retirement rules and the management has not followed the age retirement rules under Sec. 3(i) is not correct. The allegation the Clauses 3(iv & v) were not followed is not correct and the petitioner is put to strict proof of the same. In Sri Bandi Posham's case Medical Officer has already assessed his age and thus the question of not following the Section under 3(iv & v) does not arise. If the Petitioner's is a genuine one, the petitioner Union should have brought the case of Sri Bandi Posham at that time for assessment of his age. When there is no variation in the age, the question of once again referring the workman to the age Assessment Committee does not arise. According to the National Coal Wage Agreement II only management has clearly mentioned that as there is no discrepancy in the worker's age, there is no question of sending him before the Age Determination Committee. No document has been filed by this petitioner authentically to show that his age was 30 years as on 22nd June, 1962. The allegation that Sri Bandi Posham was not referred to Medical Officer/Medical Board is totally false. It may be noticed the petitioner was retired on 1st July, 1987 and accordingly he has also applied for receiving the retirement benefits from the Management. In view of the above mentioned facts, this Hon'ble Tribunal may be pleased to dismiss the claim petition as petitioner is not entitled for the relief prayed i.e. to take him back on duty or with regard to back wages from the date of alleged termination and hold that the management is justified in retiring the employee with effect from 1st July, 1987.

4. The point for adjudication is whether the action of the Respondent management in terminating services of Sri Bandi Posham, Trammer KKI Incline w.e.f, 1st July, 1987 is justified or not?

5. W.W.1 was examined on behalf of the Petitioner-workman and marked Exs. W1 to W5. M.W1 was examined on behalf of Respondent-Management and marked Exs. M1 to M7.

6. W.W1 is S. Nagiah Reddy. In brief he deposed that the concerned workman in this case Bandi Posham is the member of their Union. At the time of his appointment as Trammer, his age was 30 years. By the date of the appointment of Bandi Posham as Trammer in 1962, the age retirement rules of 1960 came into force. The age retirement rules were introduced by the Respondent company in the year 1960 for the first time and they were implemented from the year 1965. The true copy of the said age retirement Rules is Ex. W1. Sri Bandi Posham was retired from the service by the Management of the Respondent-Company on the basis of the original age as entered in the records of the Respondent at the time of his appointment, without sending him for medical examination. Before retiring him from service, Bandi Posham submitted a representation to the Management of the Respondent and the Respondent did not take any action on his representation.

7. M.W.1 is Y. Rama Mohan Rao. In brief he deposed that he knows the facts of this case. Sri Bandi Posham was

appointed on 23rd June 1962. He was retired from service on 1st July, 1987. Initially when he was enquired with regard to his age no documentary proof for the age, so he was sent for medical examination and his age was assessed and the same was recorded in the service book. A day before his appointment itself age was assessed after he was agreed then only an appointment was given. In the year 1969 all the workmen were asked to verify their service records and also to confirm with regard to the age. Sri Bandi Posham on 26th July, 1969 verified his age and confirmed the same and also enquired by thumb impression which is marked as Ex. M5 which part of Ex. M1. The witness has seen Ex. M3 at age only '3' can be seen and the second digit is erased but looks '5' but not '0'. The bonus card is not taken into account for assessing the age that card was given to the employee to enable him to draw the bonus and how much amount he has drawn from the card. In the company in view of the J.B.C.C.I. previous rules of 1969 were superseded so considering to the demand of the employee and to consider him as per 1969 rules does not arise.

8. The case of the Petitioner that he was appointed in the Company on 23rd June, 1962 when that time he was sent for physical fitness only, that in the Singareni Collieries the age retirement rules effect from 1960 but it was not implemented upto 1964, that after physical fitness he was appointed in the Company without recording his age, that for the fault of the Management, they have rectified in 1969 by taking his thumb impression on a typed proforma illegally and that the proforma was attached with his service book, that his age was not assessed by the Medical Board or Medical Officer till his termination but without assessing his age, illegally terminated, that the Management have to follow as per the age retirement Rules Section 3(i) but not followed.

9. The contention of the Respondent Management on the other hand the allegation that the retirement rules effect in the year 1960 were not implemented upto the year 1964 is not correct, that this case is not a case of termination, but it is a case of retirement after attaining the superannuation age of 60 years, that Sri Bandi Posham at the time of his appointment on 23rd June, 1962 was sent for physical fitness only and not for age determination is not correct, that the allegation that because of the fault of the management, they have rectified the same in 1969 by taking his thumb impression on typed proforma illegally and the proforma was attached with his service book is totally false, that Sri Bandi Posham was appointed after implementation of age retirement rules and the management has not followed the age retirement rules under Section 3(i) is not correct, that allegation the Clause 3(iv & v) were not followed is not correct, that Sri Bandi Posham's case Medical Officer has already assessed his age and thus the question of not following Section under 3(iv & v) does not arise and that the Management complied with all its agreements and settlements with regard to Sri Bandi Posham's case.

10. The case of the petitioner that the management did not follow Section 3(i) of the Age Retirement Rules under Ex. W1. Section 3(i) of the Age Retirement Rules read as follows:—

(i) Every person on entering Company's service shall be declared the date of birth which shall not differ from any declaration expressed or implied for any public purpose before entering company's service. The date of birth as recorded in a school or college certificate will be adopted without any modification. Whether documentary evidence of age or date of birth is not produced at the time of first appointment, the candidate shall be required to produce satisfactory evidence of the date of birth to the Chief Surgeon and Medical Officer at the time of Medical Examination and shall assess the age and record his own opinion on the Medical Certificate of health in the following form:

"After consideration of the candidate's own statement the evidence produced before me and his general appearance, I consider his age to be... years".

The age as given by the Chief Surgeon and Medical Officer shall be acceptable as final."

As per the above Section 3(i) when documentary evidence of age or date of birth is not produced at the time of first appointment, the candidate shall be required to produce satisfactory evidence of the date of birth to the Chief Surgeon

and Medical Officer at the time of Medical Examination and shall assess the age and record his own opinion on the Medical Certificate of health. Here in this case the Petitioner was appointed on 23rd June, 1962 that time he was sent for Physical fitness and he was appointed in the Company without recording the age. As per Section 3(i) of the Age Retirement Rules, it clearly shows that the petitioner's age was not assessed. Thus I find that the Management committed fault in not assessing the age of the petitioner at the time of appointment. It is pertinent to note that the Petitioner was appointed on 23rd June, 1962 i.e. after the implementation of the Age Retirement Rules and Section 3(i) is applicable to him and that the Management has not sent for his age assessment to the Medical Officer during his entire service in the Company. Further more it is evident that the Memorandum of Settlement and C.P.O. Circular any worker who contests his age should be sent to the Medical Officer for his age assessment and that it is also proved that the Company's workers age record is not correct. So one consideration of the facts and circumstances of the case, the Management without honouring the age retirement rules, Memorandum of Settlements and C.P.O. Circulars, the Management's action in the case of Sri Bandi Posham, Trammer, K.K.I Incline termination is illegal and unfair labour practice.

12. In the results, the action of the Management of M/s. Singareni Collieries Company Limited, Mandamarri in terminating services of Sri Bandi Posham, Trammer, K.K.I Incline w.e.f. 1st July, 1987 is not justified. The Respondent-Management is directed to reinstate Sri Bandi Posham on duty and pay back wages together with all attendant benefits from the date of his termination until he is taken on duty.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 15th day of March, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined on behalf of Petitioner-Workman :
W.W1—S. Nagaiah Reddy.

Witnesses Examined on behalf of the Respondent-Management :

M.W1—Y. Ram Mohan Rao.

Documents marked for the Petitioner-Workman :

Ex. W1—Photostat copy of the Age Retirement Rules.

Ex. W2/15-8-88—Copy of the letter addressed by S. Swatantra Reddy, Vice President to the A.L.C(C), Mancherla with regard to illegal termination of Sri Bandi Posham.

Ex. W3/30-11-88—Copy of the letter addressed by the A.L.C(C), Mancherla to the Secretary, Government of India, Ministry of Labour, New Delhi with regard to Bandi Posham.

Ex. W4/26-2-65—Photostat copy of the Memorandum of Settlement arrived between the Workmen and the Management of S.C. Co. Ltd., Bellampalli.

Ex. W5—True Copy of the procedure for determination/verification of age of the employees.

Documents marked for the Management :

Ex. M1—Service Record of Sri Bandi Posham.

Ex. M2—Identity Card of Sri Bandi Posham.

Ex. M3—Bonus Card of Sri Bandi Posham.

Ex. M4/24-3-87—Representation submitted by the Workmen.

Ex. M5—Thumb impression sheet in Ex. M1.

Ex. M6—Xerox copy of the J.B.C.C.I.

Ex. M7—Minutes copy before ALC.

नई दिल्ली, 19 अप्रैल, 1994

का.आ. 1186.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुमरण में एम.सी.सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 18-4-94 को प्राप्त हुआ था।

[सं. एल-22012/69/92-आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 19th April, 1994

S.O. 1186.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workmen, which was received by the Central Government on the 18-4-1994.

[No. L-22012/69/92-IR(C-II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal.

Dated, 18th March, 1994

Industrial Dispute No. 28 of 1992

BETWEEN

The Vice President, S.C. Workers Union (AITUC), Post Godavarikhani, Distt. Karimnagar. ...Petitioner.

AND

The General Manager, RG. I, M/s. S.C. Co. Ltd., P.O. Godavarikhani, Distt. Karimnagar. ...Respondent.

APPEARANCES :

Sri B. Ganga Ram, Representative—for the Petitioner.

M/s. K. Srinivasa Murthy & G. Sudha, Advocates—for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-22012/69/92-IR(C.II), dated 2-6-1992 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the Management of Singareni Collieries Company Limited, Ramagurdam Area I and their Workmen to this Tribunal for adjudication :

"Whether the action of management of M/s. S.C.C. Ltd., RG-I in not stepping up the wages of S/Sri Mitta Veeraiah, Thatipamula Kanakaiah and a Sadavaliah, Rachkonda Lingaiah and Bana Kanakiah, Coal Cutters, GDK-6B upto the level of S/Sri B. Venkaty and 10 other Coal Cutters who are juniors to them is legal and justified? If not, to what relief the workman are entitled to?"

This reference is registered as Industrial Dispute No. 28 of 1992 and notices were issued to both the parties.

2. The Petitioner workmen filed their claims statement on 1-8-1992 and the Respondent Management filed its counter

on 14-2-1994 and the dispute was posted on 14-2-1994. On 18-3-1994 both parties filed Memo by the counsels of the parties requesting to pass an Award in terms of the Settlement dated 16-3-1994 was allowed and the compromise filed by the parties was recorded. When both the parties had compromised the matter among themselves and out of the Court, this Tribunal is of the opinion that the terms of compromise entered into by them are correct and fair and in their own interest, and it is recorded. Hence an Award in terms of the compromise dated 16-3-1994 is passed and a copy of it is annexed to this Award.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 18th day of March, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I.

APPENDIX OF EVIDENCE

NIL

BEFORE THE HON'BLE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

I.D. No. 28 of 1992

BETWEEN

The Vice President, S.C. Workers' Union (AITUC), P.O. Godavarikhani,

Distt. Karimnagar.

... Petitioner.

AND

The General Manager, RG. I,

M/s. S.C. Co., Ltd., P.O. Godavarikhani, District Karimnagar.

... Respondent.

MEMO FILED BY THE RESPONDENT MANAGEMENT

It is respectfully submitted that the above Industrial Dispute was settled out of Court and the Management and Union entered into a Settlement on 2-1-1994 and also various other terms have been agreed. The Settlement is filed herewith and the Hon'ble Tribunal may be pleased to pass an Award in terms of the Settlement.

Hyderabad,
Dated, 16-1-1994.

Counsel for Management.

MEMORANDUM OF SETTLEMENT ARRIVED AT BETWEEN THE MANAGEMENT OF SINGARENI COLLIERIES COMPANY LIMITED, RAMAGUNDAM AREA-I AND THEIR WORKMEN REPRESENTED BY THE SINGARENI COLLIERIES WORKER'S UNION, GODAVARIKHANI ON 2ND JANUARY, 1994

Representatives of the Mgt.: Representatives of the Union :

1. Sri V. P. R. Vittal,
Addl. CME, GdK. No.
6, 6A/B, Inclines, RG-I.

Sri Y. Gattalah.
Central Vice President,
S. C. workers Union.

2. Sri A. Pulla Reddy,
Dy. Chief Personnel Mgr.,
Ramagundam Area-I.

The Central Vice President, Singareni Collieries Workers' Union raised a dispute before the Assistant Labour Commissioner (Central) Mancherial demanding rectification of alleged anomaly in the basic pay fixation of Sri Mitta Veeraiah and four others.

During the course of Conciliation, the Management contended that the basic pay of Sri Mitta Veeraiah and others was fixed as per the recommendations of JBCCI and that there is no anomaly in the basic pay. The Conciliation ended in failure and the dispute was referred to the Industrial Tribunal (Central) Hyderabad for Adjudication. The same was registered as I.D. No. 28/92. During the pendency of the dispute before the Industrial Tribunal (C) Hyderabad also the Union several times represented the Management to consider the case of these persons. On the representation of

the Union, the Management once again verified the basic pay fixation of the persons under dispute and found that the basic pay has been fixed appropriately. But the Union stated that as the persons under dispute were promoted as Coalcutters in October, 1989 they could not earn the annual increment due on 1-3-1990 as they did not put in 6 months service in coal cutting. The Union also added that as these persons were promoted as Coalcutters in October, 1989, they could not earn the SPRA due on 1st January, 1990.

However, in order to have cordial industrial relations, an understanding has been reached on the following terms in the above dispute.

TERMS OF SETTLEMENT

"The Management agrees to promote Sri Mitta Veeraiah and 4 others in the present dispute as Coalcutters with effect from 1-9-1989 notionally and to effect monetary benefit from 1-1-1993."

Both the parties agreed to file copies of the Settlement before the Hon'ble Industrial Tribunal (Central) Hyderabad, praying the Hon'ble Tribunal to pass the Award accordingly.

Signatures of the parties

Sd./-

(V. P. R. VITTAL)

Sd./-

(Y. GATTALAH)

Sd./-

(A. PULLA REDDY)

Godavarikhani.

dated 2-1-1994.

नई दिल्ली, 19 अप्रैल, 1994

का.आ. 1187.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुत्तरण में एस.सी.सी. एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 18-4-94 को प्राप्त हुआ था।

[सं. एल-22012/85/90-आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 19th April, 1994

S.O. 1187.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workmen, which was received by the Central Government on the 18-4-1994.

[No. L-22012/85/90-IR (C. II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.
Dated, 23rd day of March, 1994
Industrial Dispute No. 34 of 1992

BETWEEN

Singareni Coal Mines Karmika Sangh, Naspur, Adilabad District, represented by Working President P. Raja Reddy.

... Petitioner.

AND

The General Manager, Singareni Collieries Company Limited, Ramakrishnapur, Adilabad District.

... Respondent.

APPEARANCES :

S/Sri G. Bikshapathi, G. Vidyasagar, N. Vinesh Raj, G. Ravi Mohan and P. Giri Krishna, Advocates—for the Petitioner.

M/s. K. Srinivasa Murthy, G. Sudha, P. V. K. Kishore Babu and P. Suseela, Advocates—for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-22012(85)/90-IR(C.II) dated 22-6-1992 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the management of M/s. Singareni Collieries Company Limited, Ramakrishnapur and their Workmen to this Tribunal for adjudication :

"Whether the action of the Management of M/s. S.C. Co. Ltd., Ramakrishnapur, in denying to promote Sri B. Sanjeeva Reddy and 5 other Lorry Muccadams from Cat. III to Cat. IV is legal and justified? If not, to what relief the concerned workmen are entitled to?"

This reference was registered as Industrial Dispute No. 34 of 1992 and notices were issued to both the parties.

2. The Petitioner-Union filed the claim statement on 29th August, 1992 and the Respondent Management filed their counter on 5-12-1992. W.W.1 was examined on behalf of the Petitioner-Union and marked Ex. W1 to W26. M.W.1 was examined and marked Exs. M1 and M2 on its side. Ex. C1 the Court document. M.W.1 Sri B. Bhanu Prasad was examined on behalf of the Respondent-Management. He deposed at page 4 of the deposition of M.W.1 that Ex. C1 is the Court record referred to this Tribunal for adjudication. One name was given in the reference as B. Sanjeeva Reddy and five others. No names were given in the reference. The Government has not specified who are the five others whose cases have to be taken. A perusal of Ex. C1 would show that in the Schedule of the Reference the name of Sri B. Sanjeeva Reddy is given but the names of five other persons were not given. It is also seen that Sri B. Sanjeeva Reddy was not examined by the Petitioner-Union who is the main person in the reference. Hence I find that the reference made is bad in law and therefore the reference is closed as not maintainable.

Award passed.

Typed to my dictation, given under my hand and seal of this Tribunal, this the 23rd day of March, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I.

Appendix of Evidence

Witnesses Examined

for Workmen :

W.W. 1 M. Sarangapani

Witnesses Examined

for Management :

M. W.1 P. Bhanu Prasad.

Documents marked for the Workmen

Ex. W1/29-10-79—Office order promoting Sri M. Saranga Pani and another as Lorry Muccadam.

Ex. W2—Xerox copy of the Management view to the No. 1(28)/89-ALC-MCI.

Ex. W3/28-3-89—Xerox copy of the Union's view and Ref. to ALC(C) Lr. No. 1(28)/89-ALC/MCI.

Ex. W4—Xerox copy of the Minutes of the Discussion held on 1-9-1990 file No. 1(28)/89-ALC-MCI.

Ex. W5/23-12-86—Grievance Procedure stage No. I submitted by S/Sri B. Sanjeeva Reddy, A. Saibabu, Ch. Symon.

Ex. W6/2-1-87—Grievance Procedure Stage No. 2 by the workmen of Ex. W5.

Ex. W7/14-1-87—Grievance Procedure Stage No. 3 by the workmen of Ex. W5.

Ex. W8/7-9-79—Xerox copy of the Office Order in YCP/7A/1558.

Ex. W9/8-1-87—Office copy of the Letter No. Apt/RKP. III/4/19/87/31 reply to the Grievance Procedure Stage-II.

Ex. W10/19-3-89—Representation submitted by the variation in Category in the same designation—Reg. by S/Sri B. Sanjeeva Reddy, A. Saibabu, Ch. Saiman.

Ex. W11 to W26—Xerox copies of the various circulars giving instructions to the Lorry Muccadams.

Documents marked for the Management.

Ex. M1/9-9-79—Office Order No. YCP/7A/1558.

Ex. M2/25-3-75—Xerox copy of the Arbitration Award given by Sri K. V. Raghunad Reddy, Union Labour Minister.

Documents marked by the Court

Ex. C1/22-6-92—Reference Order No. L-22012(85)/90-IR(C.II) referring this I.D. to this Tribunal.

नई दिल्ली, 19 अप्रैल, 1994

का.ग्रा. 1188.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में एन.सी.सी. एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, हैदराबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 18-4-94 को प्राप्त हुआ था।

नं. एल-22012/196/88-डी 4(बी)

राजा लाल, डेस्क अधिकारी

New Delhi, the 19th April, 1994

S.O. 1188.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to management of S.C.C. Ltd. and their workmen, which was received by the Central Government on the 18-4-1994.

[No. L-22012/196/88-D. IV (B)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL I AT HYDERABAD

PRESENT :

Sri Y. Venkatchalam, M.A., B.L., Industrial Tribunal-I
Dated the 24th day of March, 1994

INDUSTRIAL DISPUTE NO. 44 OF 1989

BETWEEN :

Boina Lakshminath, S/o Komarath, Aged about 29 years represented by Singareni Coal Mines Karmika Sangh (B.M.S.) by its Working President C.C.C. Township, Adilabad Distt.

AND

The General Manager, Singareni Collieries Co. Ltd., Ramakrishnapur area, Adilabad District.
Respondent

APPEARANCES :

M/s. G. Bikshapathi, G. Vidyasagar, V. Vishwanatham and N. Vinesh Raj, Advocates for the Petitioner

M/s. Y. Srinivasa Murthy and G. Sudha, Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour by its Order No. L-22012(196)/88-D.IV.B. dated 28-6-1989.

referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the Management of Singareni Collieries Company Limited, Srirampur and their workmen to this Tribunal for adjudication.

"Whether the action of the Management of M/s. Singareni Collieries Co. Ltd., Srirampur in terminating the services of Sri Boina Kanakaiah, General Madoor, Srirampur I Incline w.e.f. 25-5-1983 is justified? If not, to what relief the workman concerned is entitled?

This reference was registered as Industrial Dispute No. 44 of 1989 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner-Union read as follows :

It is submitted that the Petitioner was appointed on 27-4-1979 as Badli Coal Filler and posted to work at Srirampur I Incline. He was drafted as General Mazdoor from 1-10-1980. While he was working at Srirampur I Incline he suddenly fell sick on 2-6-1982 and he developed Mental imbalance. The parents of the petitioner took the petitioner immediately to the native place for treatment and there was no improvement. Finally, he was taken to Hyderabad and he had a treatment as out patient in Osmania General Hospital, Hyderabad and also Government Mental Hospital. As there was no improvement, Petitioner had undergone treatment under Dr. T.R.V. Rao, Physician and Surgeon for Manic Depressive Phychasis from June 1982 to 21-10-1986. He was found fit by the Doctor and he was allowed to resume duty on 21-10-1986. Immediately after the petitioner was declared fit for duty, he reported to the Colliery Manager of Srirampur-I Incline. But the said Colliery Manager informed the Petitioner that his services were already terminated with effect from 23-12-1982. Immediately after coming to know that the said illegal termination, the Petitioner submitted representation to General Manager but he was not allowed to resume duty. On 30-11-1982 an enquiry was held into the charges and finally the petitioner was terminated from service by an order dated 25-5-1983. That he has not received any letters or notice from the management with regard to the charges or the alleged enquiry. On the other hand, the Management is aware that the petitioner was undergoing treatment for mental depression at Hyderabad under an expert Doctor. The order of dismissal passed by the Addl. Chief Mining Engineer, Kamakrishnapuram Division No. II dt. 25-5-1983 is illegal and unjustified for the following grounds: The enquiry conducted by the management *exparte* is illegal and contrary to the provisions of the Certified Standing Orders of the Company. The petitioner was sick and therefore he was away from duty. The treatment was a prolonged one being mental depression case. The petitioner was sending intimations through his colleague workman to the Colliery Manager to the effect that the petitioner was undergoing treatment at Hyderabad for mental depression. There are number of cases where the employees were dismissed for unauthorised absence and they were reinstated into service consequent on agreement entered between the Union and the management but the case of the Petitioner was not considered for the reasons best known to the Management more especially when the absence was for a bonafide reason. When the Petitioner submitted the fitness certificate, countersigned by the Government Doctor, the management ought to have accepted the same and reinstated the Petitioner into service for driving the petitioner to raise dispute for adjudication. The order of dismissal is wholly unjustified and arbitrary, apart from being in violation of certified standing orders of the Company. It is therefore prayed that the Hon'ble Court may be pleased to set aside the order of dismissal passed by the Addl. Chief Mining Engineer, in proceedings dt. 25-5-1983 as illegal and pass an award directing the Respondent to reinstate the petitioner into service with full back wages and other attendant benefits and grant such other relief as this Hon'ble Court deems fit and proper.

3. The brief facts of the counter filed by the Respondent read as follows.—It is true that this petitioner was initially appointed as Badli Worker from 29-6-1979 but not from 27-4-1979 as alleged and from 1-7-1980 the petitioner was

appointed as Coal Filler. According to the Company records the petitioner was absent from 2nd June, 1982 continuously contrary to the provisions of the Standing Orders of the Company without intimating the respondent company. The allegation that the petitioner fell sick on 2-6-1982 and he developed mental imbalance is totally false. It may be noticed as the petitioner was unauthorisedly absent from 2-6-1982 management was constrained to take action under Company's Standing Orders, Clause 16(16) and sent a charge sheet to the petitioner's address which was returned undelivered by postal authorities stating "no one by name existing". As such, the charge sheet cum enquiry notice was published in EENADU daily on 11-12-1982 intimating that the workman should attend the enquiry on 23-12-1982 along with his witnesses. As he was failed to attend the enquiry, the Enquiry Officer was constrained to conduct the enquiry *exparte* basing upon the evidence and records available and forwarded his findings to the Respondent Company. Having looked into the entire record of petitioner and enquiry proceedings and report the management terminated his services with effect from 25-5-1983 vide letter dt. 25-5-1983. The further allegation that the punishment of dismissal is grossly disproportionate to the alleged misconduct is also not correct. There are no merits in the petitioner's case. Petitioner is not entitled for reinstatement with full back wages and all other attendant benefits and other reliefs as prayed. In view of the above mentioned facts this Hon'ble Court may be pleased to dismiss the claim petition and uphold that the order passed by the management is justified, legal and proper.

4. The point for adjudication is whether the action of the Respondent in terminating the services of Sri Boina Kanakaiah, w.e.f. 25-5-1983 is justified or not?

5. M.WI was examined on behalf of the Respondent-Management and marked Exs. M1 to M8. No oral or documentary evidence has been adduced on behalf of the Petitioner-workman.

6. In this case the allegation of the Petitioner workman that while he was working at Srirampur I Incline as General Manager he suddenly fell sick on 2-6-1982 and he developed mental imbalance, that he was taken to Hyderabad and he had a treatment as out patient in Osmania General Hospital, Hyderabad and also Government Mental Hospital as there was no improvement, the petitioner had undergone treatment under Dr. T. R. V. Rao, Physician and Surgeon for Manic Depressive Phychasis from June 1982 to 21-10-1986, that he was found fit by the Doctor and he was allowed to resume duty on 21-10-1986, that when he was declared fit for duty, he reported to the Colliery Manager of Srirampur-I Incline, that the Colliery Manager informed the Petitioner that his services were already terminated with effect from 23-12-1982.

7. The allegation of the Respondent Management is that according to the Company records the petitioner was absent from 2nd June, 1982 continuously contrary to the provisions of the Standing Orders of the Company without intimating the Respondent Company, that this Respondent is not aware of the alleged sickness of the petitioner nor the petitioner intimated the Respondent about his sickness or about his treatment, that the petitioner was unauthorisedly absent from 2-6-1982 the management was constrained to take action under Company's Standing Orders Clause 16(16) having looked into the entire report the management terminated his services w.e.f. 25-5-1983.

8. Before going into the merits of the case, this Tribunal first decided the validity of the domestic enquiry and on 21-2-1984 this Tribunal passed the order holding that the *exparte* domestic enquiry conducted in this case is not vitiated for any reason.

9. Now under Section 11A of the Industrial Disputes Act, 1947 this Tribunal has to decide whether the dismissal is shockingly disproportionate to the gravity of the misconduct committed by the Petitioner workman.

10. As per the record placed before me that the Petitioner-workman fell sick and he was under prolonged treatment one being of mental depression. It is seen that the Petitioner workman had undergone treatment under Dr. T. R. V. Rao, Physician and Surgeon for Manic Depressive Phychasis from June 1982 to 21-10-1986. It is also seen that he

was found fit by the Doctor and he was allowed to resume duty on 21-10-1986, and the said certificate was counter signed by the Civil Assistant Surgeon of Osmania General Hospital. The allegation that the petitioner was not issued with any chargesheet nor he was aware of any enquiry with regard to the chargesheet and the enquiry conducted by the Management *ex parte* is illegal. The contention on behalf of the Management that the charge sheet has been published in the newspapers. Before this publication the Management sent a charge sheet to the Petitioner's address which was returned undelivered by Postal Authorities stating "no one by name existing". It is seen that when the Petitioner workman was taking treatment at Hyderabad, how can the petitioner workman know about the issuance of charge sheet and paper publication. Ordinarily when a person falls sick and mental depressed, he would not be reading any newspaper and on the other hand the petitioner workman was intimating the Respondent through his colleagues about his treatment at Hyderabad. When the petitioner workman was not at his native address place, when the charge sheet was sent by post, how can he come to know about the charge sheet and the enquiry to be held by the Management. The Respondent Management should have waited for the Petitioner workman joining duty after the treatment and the order of dismissal is vitiated, and that the punishment of dismissal from service is grossly disproportionate to the alleged misconduct.

11. In the result, the action of the Management of M/s. Singareni Collieries Company Limited, Srirampur in terminating the services of Sri Boina Kanakaiah, General Mazdoor, Srirampur-I Incline w.e.f. 25-5-1983 is not justified. The Respondent Management is directed to reinstate the Petitioner-workman into service with full back wages and all other attendant benefits.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 24th day of March, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined
for the Petitioner :

NIL

Witnesses Examined for
the Respondent :
M.W.I. A. Potha Raju

Documents marked for the Petitioner : (on P.P.)

NIL

Documents marked for the Respondent : (on P.P.)

- Ex. M1 9-8-92—Appointment letter issued to Sri A. Potha Raju to conduct enquiry in certain Division of the Mine.
- Ex. M2 13-11-82—Charge Sheet.
- Ex. M3—Registered cover containing Ex. M2.
- Ex. M4—Ack. with regard to Ex. M3.
- Ex. M5—Charge Sheet published in Newspaper.
- Ex. M6—Enquiry Proceedings.
- Ex. M7—Form C attendance register containing 7 registers.
- Ex. M8—Enquiry Report.

नई दिल्ली, 3 मई, 1994

का.प्र. 1189. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, एस सी सी एल के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अन्वय में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय

सरकारी औद्योगिक अधिकरण, हैदराबाद के पंचपर को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-5-94 को प्राप्त हुआ था।

[सं. एल-22012/344/89—आई आर (सी-II)]

राजा लाल, डैस्क अधिकारी

New Delhi, the 3rd May, 1994

S.O. 1189.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workmen, which was received by the Central Government on 2-5-94.

[No. 1-22012/344/89-IR(C-II)]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

Present :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.
Dated : 6th day of April, 1994

INDUSTRIAL DISPUTE NO. 30 OF 1990

BETWEEN

The Workmen of S.C. Co. Ltd.,
Ramakrishnapur, Adilabad, Dist.
(A.P.)

.. Petitioner

AND

The Management of M/s. S.C. Co. Ltd.
Ramakrishnapur, Adilabad Dist.
(A.P.)

.. Respondent

Appearances :

Smt. Annapurna Devi, N. K. and A. V. Parthasarthy,
G. Sundra Kumari, Advocates for the Petitioner.

M/s. K. Srinivasa Murthy, G. Sudha and M. Ananthas-
sen Rao, Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. 1-22012(344)/89-IR(C-II), dt. 2-5-1990 referred the following dispute under Section 10(1)(d) (2A) of the Industrial Disputes Act, 1947 between the Management of M/s. Singareni Collieries Company Limited, Ramakrishnapur and their Workmen to this Tribunal for adjudication :

"Whether the action of the Management of M/s. S. C. Co. Ltd., Ramakrishnapur in terminating services of Sri P. Samaiah, General Mazdoor, RK-I CSP, is justified? If not, to what relief the workman concerned is entitled?"

This reference is registered as Industrial Dispute No. 30 of 1990 and notices were served on both the parties.

2. The brief facts of the claim statement is read as follows :—One Mr. P. Samaiah was an employee of the Respondent-Company. A charge sheet dt. 15-5-1984 was served on him stating that on 9-5-1984 at about 11.30 p.m. P. Samaiah (hereinafter called the 'Dismissed Workman') entered into the office of the Executive Engineer along with Sri K. Sree Ramachandra Murthy, General Mazdoor, CSR, RKP for sanction of leave of the dismissed workman for absenteeism pending from 3-5-1984 to 5-5-1984. When the leave was refused by the Executive Engineer, the dismissed workman behaved indecently with the Executive Engineer and tried to assault him, which act amounts to misconduct under Company's Standing Order 16(5). The dismissed workman.

submitted his written explanation on 17-5-1984 and denied the charges levelled against him. That enquiry was conducted on 23-8-1984. Based upon the enquiry report, the Respondent dismissed the workman by passing the order dt. 16-9-1984. In fact the Respondent also got held a session case No. 23/85 on the title of Asstt. Session Judge, Asilabad for the alleged offence under Sec. 307, IPC alleging that on 3-9-1984 when the Respondent was going on his scooter to his house, P. Sammaiah way laid the Respondent and beat him on his mouth and shoulder. The case was closed in the acquittal as not guilty. The order of the Respondent is bad, illegal and against the principles of law and as such it is liable to be set aside for the following and other grounds that may be urged at the time of hearing the case. The Respondent failed to see that the one Sri K. Sree Kaniachandramurthy was also served with a similar charge sheet and later he was taken as management's witness and not initiated any enquiry proceedings and other things which acts of the Respondent clearly goes to show that the management is vindictive and dismissal order was passed with a mala fide intention of removing the workman from service for one reason or other. The Respondent failed to state as to what is meant by language said to have been used by the workman. In the charge sheet dt. 15-5-1984 as it was stated that the dismissed workman behaved indecently and tried to assault and thereafter the Respondent improved the case and also added the exact words said to have been used by the workman. The Respondent neither issued any notice or heard the workman before passing the dismissal order and as such the order is bad. The management failed to take into consideration, the fact that the dismissed workman had to go to his native place due to the sudden death of his son and requested the Respondent to regularise the leave of absence from 3-8-1984 to 5-5-1984 and at that time the workman's mind was full of sorrow and instead of sympathetic towards the workman, the Respondent behaved so arrogantly said behaved in a cruel way and later got the workman dismissed, just to satisfy his image, which act of the Respondent is vindictive and as such it is liable to be set aside in limine. This Hon'ble Court may be pleased to set aside the dismissal order dt. 16-9-1984 dismissing P. Sammaiah, General Mazdoor, CSP RKP as bad, illegal and direct the Respondent to reinstate the workman with all back wages, seniority and other benefits as per the Company's rules and notification etc.

3. The brief facts of the counter filed by the Respondent read as follows :—It is true that the workman in dispute, Sri P. Sammaiah, was working as General Mazdoor in the Respondent, Company. He remained absent from 3-5-1984 to 5-5-1984 and he came to the office of the Executive Engineer, CSP-I on 9-5-1984 at 4.30 P.M. along with one K. Sree Rama Chandramurthy for sanction of leave for the absented period. As he has not followed the leave rules, management refused to sanction leave and Sri P. Sammaiah behaved indecently and tried to assault the officer. In view of the serious misconduct committed by the workman in dispute and also violated the Standing Orders, as such, management issued charge sheet on 15-5-1984 which was acknowledged by the petitioner on 16-5-84 and submitted his explanation on 17-5-1984 to the charge sheet denying the charges, and conducted enquiry. It is true that the charge sheet was issued on 15-5-1984 and it has nothing to do with the Criminal Case, Sessions Case No. 23 of 1985 by which time the entire domestic enquiry was completed and the findings were forwarded to the disciplinary authority for taking appropriate action. It is a case where the employee remained absent without applying for leave and then demanding to regularise such absenteeism by granting leave, which is bad in law. It may be noticed that the present charge has nothing to do with the criminal case. Sessions Case No. 23/1985 is no way connected with the present disciplinary action initiated by the management and only to side track the issue petitioner has chosen to make these allegations. It is submitted that as on the date of dismissal there was no provision in the Standing Orders to issue second show cause notice and there is law contemplated for the same. The allegation that the workman in dispute has to go to his native place due to sudden death of his son is requested the Respondent to regularise leave of absence is false. So far as management is concerned it has to implement discipline. No employee is having right to circumvent the rule and has a right to make a demand and behave indecently contrary to rules. It may be noticed that by complying to the dictated terms

of the workmen and Unions if Officers act it will have a deleterious affect on the establishment. What the petitioner seeking is that though the workman was absent unauthorisedly, he should be sanctioned leave and officers should act contrary to the leave rules. Management is justified in removing the workman from service. Management cannot repose confidence in such employee and cannot take workman from that workman who has militant attitude and dictate terms to officers. As such, the Management is justified in its action. He is not entitled for any reliefs a sprayed for. In view of what has been stated above, this Hon'ble Court may be pleased to dismiss the claim petition.

4. The point for adjudication is whether the action of the Respondent in terminating services of Sri P. Sammaiah, General Mazdoor, is justified or not?

5. M. W1 was examined on behalf of the Respondent-Management and marked Exs. M1 to M8. No oral or documentary evidence has been adduced on behalf of the Petitioner workman.

6. Firstly this case came up for hearing on preliminary issue on the validity of the domestic enquiry conducted by the Respondent Management. This Tribunal passed the Order on 21-2-1994 that the domestic enquiry conducted by the Respondent Management was held properly and it is not vitiated.

7. Now this Tribunal has to decide on merits whether the dismissal of the Petitioner-workman is justified or not. It is true that the Petitioner-workman was issued with a charge sheet dt. 15-5-1984 with the allegation that when the leave was refused by the Executive Engineer he behaved indecently with the Executive Engineer, CSP, RKP and tried to assault him, and the Respondent-Management called for the explanation of the Petitioner-workman. The Petitioner submitted his explanation on 17-5-1984 denying the charges. A regular domestic enquiry was conducted and the Enquiry Officer submitted enquiry proceedings which is marked as Ex. M6 and Ex. M8 is the enquiry report forwarded to the Respondent-Management. On the basis of the Enquiry Report, the Management issued dismissal order to the petitioner-workman for the misconduct committed by him under Section 16(5) of the Company's Standing Order.

8. In this case the Petitioner-workman was absent from duty from 3-5-1984 to 5-5-1984 and 9-5-1984 he went to the office of the Executive Engineer, CSP. I along with Sri K. Sree Rama Chandramurthy for sanction of leave for the absented period, when the Management refused to sanction leave, the Petitioner-workman behaved in indecent manner and tried to assault the officer. A perusal of the Enquiry Report would reveal that the Petitioner-workman turned violent, abused the Executive Engineer in filthy language. The Petitioner-workman is working as General Mazdoor. He alleged that the Respondent failed to state as to what is meant by language said to have been used by the Petitioner-workman. In the charge sheet dt. 15-5-1984 as it was stated that the dismissed workman behaved indecently and tried to assault and thereafter the Respondent improved the case and also added the exact words said to have been used by the Petitioner-workman. Whatever it may be, the Petitioner-workman has abused the Official of the Respondent-Management for the refusal to grant his leave. The Petitioner workman being an illiterate person and a labour community, it is in common parlance that whatever goes wrong with the officials of the Respondent and the workman, it is bound to be in violent turn and using of filthy language is the common phenomenon. The charge levelled and proved against the Petitioner is not so grave and serious as to warrant the punishment of dismissal from service. The misconduct committed by the Petitioner-workman does not warrant dismissal from service. He may as well be given a lesser punishment i.e. stoppage of increment, stoppage of wages for the absented period. The dismissal from service of the Petitioner-workman is shockingly disproportionate to the gravity of the misconduct committed by him, so I find that the dismissal order bearing No. PRKP. I/5-C/84/1465, dt. 16-9-1984 is illegal and is liable to be set aside.

9. In the result, the action of the Management of M/s. Singareni Collieries Company Limited, Ramakrishnapur in terminating services of Sri P. Sammaiah General Mazdoor, RK-I CSP is not justified. The Respondent-Management is

directed to reinstate the Petitioner-workman into service with all back wages, attendant benefits seniority and all other benefits as per the Company's Rules, Standing Order and Notification etc.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 6th day of April, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I
Appendix of Evidence

Witnesses Examined for the Petitioner-Workman :	Witnesses Examined for the Respondent-Management M.WI S. Janardhana Rao
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Documents marked for the Petitioner :

NIL

Documents marked for the Respondent :

Ex. M1 Appointment Letter by Addl. Chief Mechanical Engineer, appointing M. W1 as Enquiry Officer.

15-5-84

Ex. M2 Charge sheet issued to Sri P. Samaiah.

Ex. M3 Acknowledgement of Ex. M2 back of Ex. M2.

Ex. M4 Explanation submitted by the petitioner.

Ex. M5 Enquiry Notice.

Ex. M5 A Acknowledgement of notice on Ex. M5.

Ex. M6 Enquiry Proceedings.

Ex. M7 Exhibit marked in Domestic Enquiry.

Ex. M8 Enquiry report forwarded by M. W1.

नई दिल्ली, 21 अप्रैल, 1994

का.आ. 1190 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, एल.आई.सी. ऑफ इंडिया के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में औद्योगिक अधिकरण, कोल्लम के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार की 19-4-94 को प्राप्त हुआ था।

[संख्या एल-17012/50/93-आई आर (बी-2)]
बी.के. शर्मा, डैस्क अधिकारी

New Delhi, the 21st April, 1994

S.O. 1190.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kollam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of L.I.C. of India and their workmen, which was received by the Central Government on 19-4-94.

[No. L-17012/50/93 IR(B-II)]
V. K. SHARMA, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL,

KOLLAM

(Dated this the 29th March, 1994)

PRESENT:

Sri C. N. Sasidharan, Industrial Tribunal

IN

Industrial Dispute No. 2/93

BETWEEN

The Senior Divisional Manager, Life Insurance Corporation of India, Divisional Office, Jeevan Prakash, Pattam, Thiruvananthapuram.

(S/s. S. S. Kalkura & R. S. Kalkura, Advocates, Thiruvananthapuram.)

AND

The General Secretary, National Life Insurance Employees Association, Trivandrum Division, Pattam, Thiruvananthapuram

(Sri. R. Lakshmana Iyer Advocate, Thiruvananthapuram)

AWARD

This Industrial dispute has been referred for adjudication to this Tribunal by the Government of India as per order No. I. 17012/50/93-IR(B-II) dated 16-2-1995.

"Whether the action of the management of Life Insurance Corporation of India in imposing a punishment of stepping down the basic pay of Sri S. Balakrishna, Assistant by 3 stages permanently in the time scale applicable and recovery of Rs. 2510 from him is justified? If not, to what relief is the workman entitled to?"

2. In pursuance to notice issued from this Tribunal both the union representing the workman Sri. Balakrishna and management entered appearance before this Tribunal and filed statements advancing their respective contentions. Thereafter the case was adjourned for the evidence of management and posted to 29-1-1994. On that day the management got adjournment and the case was posted to 26-2-1994. On 26-2-1994 the management and its counsel remained absent. No adjournment was also sought on behalf of the management. However the case was again adjourned to 22-3-1994. But on that day also the management and its counsel kept away from this Tribunal without any reason whatsoever. The workman and his counsel were present. The management was therefore set ex parte and the workman was asked to prove his case. The General Secretary of the union of the workman accordingly filed an affidavit in support of its case pleaded in the claim statement.

3. The General Secretary of the union in his affidavit has averred that the management had imposed on the workman the punishment of stepping down his basic pay by three stages permanently in the time scale applicable and recovery of Rs. 2510 without actually undertaking the journey that Travel Concession (L.T.C.) and had undertaken a journey to New Delhi along with his family that the management sanctioned Rs. 2510 to him for this purpose after getting clarification from him and after scrutiny that the management issued memo of charges subsequently alleging that the workman submitted a fraudulent bill and obtained the amount of Rs. 2510 without actually undertaking the journey that he had denied the charges that the management ordered an enquiry and that the Enquiry officer found the workman not guilty of the charges. The further averment is that the management disagreed with the findings of the Enquiry Officer and imposed the twin punishment that the management has arbitrarily rejected the findings recorded by the Enquiry Officer that the management did not adduce any evidence before this Tribunal to establish the charges against the workman and that the punishment is illegal, irregular and unsustainable.

4. The union has produced photocopies of 6 documents in support of its case which I am marking as Exhibit W-1 to W-6. In the absence of contest I accept the affidavit of the General Secretary of the union and hold that the charges against the workman are not proved before this Tribunal and therefore the punishment imposed on the workman is legal and unsustainable.

5. In view of the above conclusion, an award is passed holding that the twin punishment imposed on the workman by the management is unjustified and cancelling the same.

C. N. SASIDHARAN, Industrial Tribunal,

APPENDIX

Exhibits marked on the side of the union :—

- Ext. W1.—Photocopy of Leave Travel concession claim dated 3-7-1986 submitted by the workman to the management.
- Ext. W2.—Photocopy of letter dated 11-7-1986 from the management to the workman.
- Ext. W3.—Photocopy of letter dated 17-7-1986 from the workman to the management.
- Ext. W4.—Photocopy of letter dated 31-7-1986 from the management to the workman.
- Ext. W5.—Photocopy of letter dated 4-8-1986 from the workman to the management.
- Ext. W6.—Photocopy of letter dated 14-10-1986 from the management to the workman.

नई दिल्ली, 27 अप्रैल, 1994

का.आ. 1191:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, इण्डियन ओवरसीज बैंक के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचरट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-94 को प्राप्त हुआ था।

[संख्या एल-12012/37/92-आई आर (बी-2)]
बी.के. शर्मा, डेस्क अधिकारी

New Delhi, the 27th April, 1994

S.O. 1191.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Overseas Bank and their workmen, which was received by the Central Government on 26-4-94.

[No. L-12012/37/92-IR(B-II)]
V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU
MADRAS

Thursday, the 7th day of April, 1994.

PRESENT:

Thiru K. Sampath Kumaran, B.A. B.L.,

INDUSTRIAL TRIBUNAL

INDUSTRIAL DISPUTE NO. 57/92

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workman and the Management of Indian Overseas Bank, Madras-2.)

BETWEEN

Thiru M. Govindaraj,
B-49, DRO Colony,
K. Pudur Post,
Madurai-7.

AND

The General Manager,
Indian Overseas Bank,
No. 762, Anna Salai,
Madras-600 002.

REFERENCE :

Order No. L-12012/37/92-IR(B.II), dated 24-6-92, Ministry of Labour, Government of India, New Delhi.

This dispute coming on this day for final hearing in the presence of Tvl. R. Ganesan and R. Gowthaman, Advocates appearing for the Workman, and of Tvl. N. G. R. Prasad and S. Vaidyanathan, Advocates appearing for the Management, upon perusing the reference, claim & counter statements and all other connected papers on record and the parties having filed a joint memorandum of settlement and recording the same, this Tribunal passed the following :

AWARD

This dispute between the workman and the management of Indian Overseas Bank, arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by Ministry of Labour, Government of India, New Delhi for adjudication of the following issue :

“Whether the action of the management of Indian Overseas Bank in dismissing Sh. M. Govindaraj from the services of the Bank is justified? If not, what relief the workman is entitled to ?”

This Industrial dispute was tried on the preliminary issue as to the fairness of the enquiry and this Tribunal by its order dated 28-7-93 found that the enquiry conducted against the petitioner was not fair and so the dispute was being adjourned for enquiry. While so, the parties to this dispute have settled the matter as between themselves and have filed a joint memo containing the terms of the settlement. Both sides want an award to be passed in terms of the settlement. Since both the sides have settled the matter and request the Court to pass an award in terms of the settlement, an award has to be passed in terms of the settlement.

In the result, an award is passed in terms of the settlement. No costs. A copy of the settlement will form part of the award.

Dated, this the 7th day of April, 1994.

THIRU K. SAMPATH KUMARAN, Industrial Tribunal.

BEFORE THE TAMIL NADU STAFF INDUSTRIAL
TRIBUNAL AT MADRAS

I.D. No. 57 of 1992

M. Govindaraja .. Petitioner|Employee

—Versus—

Indian Overseas Bank, Madras-2

.. Respondent|Management

JOINT MEMO FILED BY THE PETITIONER AND RESPONDENT

The parties to the above dispute have mutually agreed to settle dispute and reduced the same into Writing:—

The parties have agreed to place the settlement before this Hon'ble Tribunal for passing the award in terms of the settlement dt. 7-4-91 (copy enclosed) and hence an Award may be passed in terms of the Settlement dt. 7-4-94 and thus render justice.

Dated at Madras, this the 7th day of April, 1994.

Sd/

Sd/-

Advocate for Petitioner
Sd/- S. Vaidyanathan.
Advocate for Respondent.

PETITIONER
RESPONDENT

FORM H

(Rule 58)

MEMORANDUM OF SETTLEMENT

M. Govindaraj

...EMPLOYEE

—Vs.—

Indian Overseas Bank,
Madras-600 002.

Represented by General Manager. ...MANAGEMENT

SHORT RECITAL OF THE CASE

1. M. Govindaraj, Shroff-cum-Godown Keeper, was dismissed from the Bank's Service on 16-8-1986. The dispute relating to his dismissal has been referred for adjudication to the Central Government Industrial Tribunal, Madras, on 24-6-1992 and is pending on its file as I.D. 57/1992.

2. While the dispute was pending, the workman M. Govindaraj, approached the Management for an amicable Settlement and the parties have discussed and come to an amicable Settlement, the terms of which are as follows:

TERMS OF THE SETTLEMENT

1. The Workman agrees to give up his claim for the Back wages, Continuity of Service, Increments and other benefits from the date of dismissal i.e., 16-8-1986 provided he is given permanent employment again by the Management.

2. The Management agrees to give him permanent employment within sixty days from the date of the Award passed by the Industrial Tribunal, Madras in I.D. 57 of 1992.

3. The Workman's pay will be fixed on the basis of his last drawn pay prior to his dismissal as revised thereafter.

4. The workman is not entitled to any increments including notional increments during the period of suspension and dismissal.

5. The Workman will be posted to a place of Bank's choice.

6. The parties have agreed to file this Settlement before the Industrial Tribunal, Madras and seek an Award in terms of the Settlement in full and final Settlement of the Dispute, viz., I.D. 57 of 1992 pending before it.

Madras.

7-4-94.

1. Sd/-

2. Sd/-

WITNESSES :

1. Sd/- P. N. Janakiraman.

2. Sd/- K. Narasimhan.

Sd/-

SIGNATURE OF PARTIES.

Sd/- THIRU K. SAMPATH KUMARAN

INDUSTRIAL TRIBUNAL.

नई दिल्ली, 3 मई, 1994

का.आ. 1192:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में केन्द्रीय सरकार, आन्ध्र बैंक के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिशष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-4-94 को प्राप्त हुआ था।

[संख्या एल-12012/313/87-डी-2(ए)/आई.आर.बी-2]

बी.के. शर्मा, डैस्क अधिकारी

New Delhi, the 3rd May, 1994

S.O. 1192.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Andhra Bank and their workmen, which was received by the Central Government on 18th April, 1994.

[No. L-12012/313/87-D.II.A/IR(B.II)]

V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.

Dated, the 28th day of March, 1994

Industrial Dispute No. 26 of 1988

BETWEEN

The Workmen of Andhra Bank,
Sultan Bazar, Hyderabad

...Petitioner.

AND

The Management of Andhra Bank,
Sultan Bazar, Hyderabad.

...Respondent.

APPEARANCES :

S/Sri V. Venkata Ramana & V. Srinivas, Advocates—
for the Petitioner-Workman.M/s. K. Srinivasa Murthy and G. Sudha, Representa-
tives—for the Respondent-Management.

AWARD

The Government of India, Ministry of Labour by its Order No. L-12012/313/87-D.II(A) dated 16th February, 1988 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the Management of Andhra Bank and their workmen to this Tribunal for adjudication :

"Whether the action of the management of Andhra Bank in dismissing from service Sri P. Lakshminarayana, Sub-Staff with effect from 22nd June, 1983 is justified? If not, to what relief is the workman entitled?"

This reference was registered as Industrial Dispute No. 26 of 1988 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner-workman read as follows:—Mr. P. Laxminarayana, Sub-staff was appointed as an Attender in the Bank on 9th December, 1978 by its Staff No. 6525. While he was working at Chikkadpalli Branch, he was suspended pending enquiry on 10-1-80 on the ground that he has fraudulently withdrawn an amount of Rs. 10,900.00 from the S.B. Account of the Branch. Notwithstanding the suspension order, the Management did not issue charge sheet to the workman for more than 3 months. It is submitted that the allegation is false and the workman is made a scape goat for the acts of the Branch Manager, Mr. V.V. Ramana and other staff. Under threat and coercion, a statement was obtained from the workman by the management in the month of January, 1980. The workman has been given to understand that matters will be settled if he gives his statement. The then Branch Manager has obtained his statement from the workman as well as from the father of the workman. It is submitted that the contents of the statements is as per the dictation of the Branch Manager and were not voluntary. A charge sheet was issued to the workman on 20th March, 1980 and the contents of the charge sheet were denied by the workman. The management was requested to provide opportunity of perusing the records, before the explanation can be given but the same was denied to the workman. Thereafter the Management appointed Mr. Ramaraju as the Enquiry Officer and on the protest made by the workman, the Enquiry Officer was changed and Mr. Y. Krishna Murthy was appointed as the Enquiry Officer. The Enquiry Officer proceeded with the enquiry ex-parte from 17th May, 1982 to 20th May, 1982 without notice to the workman and concluded that the charges

are true. Thereafter the workman was dismissed from service w.e.f. 22nd June, 1983. It is submitted that action taken by the Management against the workman is arbitrary, illegal and contrary to the principles of natural justice. The punishment of dismissal is shockingly disproportionate to the misconduct said to have been proved. It is therefore, prayed that this Hon'ble Tribunal may be pleased to direct the Respondent to reinstate Mr. P. Laxminarayana, Sub-Staff No. 6525 with full back wages and all other attendant benefits including the continuity of service and grant other reliefs as it deems fit and proper.

3. The brief facts of the counter filed by the Respondent Bank read as follows:—Sri P. Laxminarayana was appointed as a temporary peon in 1975 and according to exigencies he worked in various branches and he was given permanent employment on 9th December, 1978 and was allotted Staff No. 6525. That while the employee was working at Chikkadpalli Branch he was found to have indulged in the fraud to the tune of Rs. 10,900.00 in the year 1979. It is submitted that the employee tampered with the records of the branches and also suppressed certain important material facts as such management suspended the petitioner on 10th January, 1980 and conducted enquiry. Without prejudice to the rights of the management it is submitted that management after issuing charge sheet conducted domestic enquiry by appointing Sri V. Krishna Murthy as Enquiry Officer and passed dismissal order. It is submitted management after going through the enquiry proceedings and enquiry officer's findings and by applying its mind only and going through the past records of the employee dismissed the employee on 2nd June, 1983. The allegation that punishment imposed by the management is shockingly disproportionate to the misconduct is not correct. Having made a thorough study by the petitioner, he has made out a scheme to play fraud against the Bank and do so. The Bank being financial organisation it is practically difficult to keep such employees in the Bank who have played fraud. In view of the above it is submitted the employees is not entitled to the relief as prayed for in the petition and this Hon'ble Tribunal may be pleased to dismiss the claim petition and reject the reference and confirm the order passed by the management.

4. The point for adjudication is whether the action of the Respondent Bank in dismissing from service Sri P. Lakshminarayana, Sub-Staff w.e.f. 22nd June, 1983 is justified or not?

5. WW1 was examined on behalf of the Petitioner-Workman and no documents were marked for the Petitioner. M.W1 and M.W2 were examined on behalf of the Respondent-Bank and marked Exs. M1 to M61

6. Before going into the merits of the case, this Tribunal has decided the validity of the domestic enquiry conducted by the Respondent-Bank. On 24th January, 1994, this Tribunal passed the order holding the domestic enquiry held by the Respondent-Management as fair and proper.

7. In this case the allegation of the Petitioner-workman is that he was appointed as an Attender in the Bank on 9th December, 1978, that while he was working at Chikkadpalli Branch, he was suspended pending enquiry on 10th January, 1980 on the ground that he has fraudulently withdrawn an amount of Rs. 10,900.00 from the S.B. Account of the Branch, that it is submitted that the allegation is false and the workman is made a scape goat for the acts of the Branch Manager Mr. V. V. Ramana and other staff, that under threat and coercion, a statement was obtained from the workman by the Management in the month of January, 1980, that the workman has been given to understand that matters will be settled if he gives his statement, that then the Branch Manager has obtained his statements from the workman as well as from the father of the workman, that the contents of the statement is as per the dictation of the Branch Manager were not voluntary, that the charges are not established even on the basis of the evidence adduced before the Enquiry Officer. That the punishment of dismissal is shockingly disproportionate to the misconduct said to have been proved and that it is submitted that the dismissal of the workman is totally unjustified and illegal.

8. The contention of the Respondent-Bank that Sri P. Laxminarayana was appointed as temporary Peon in 1975 and according to exigencies he worked in various branches and he was given permanent employment on 9th December, 1978, that while the employee was working at Chikkadpalli Branch he was found to have indulged in the fraud to that

of Rs. 10,900.00 in the year 1979, that the employee tampered with the records of the Branches and also suppressed certain important material facts as such management suspended the petitioner on 10th January, 1980 and conducted the enquiry, that the allegation that action taken by the management is arbitrary, illegal and contrary to the principles of natural justice is false, that the punishment imposed by the management is shockingly disproportionate to the misconduct is not correct that the Bank being financial organisation it is practically difficult to keep such employees in the Bank who have played fraud, that the allegation that action of the management is also discriminatory in as much as no other employee of the branch proceeded with disciplinary action is not correct, that in view of above it is submitted that the employee is not entitled to the relief as prayed for in the petition.

9. The petitioner workman was issued with the charge sheet dated 20th March, 1980 that he has fraudulently and with dishonest intention withdrawn an amount of Rs. 700.00 which was in advertently credited to your account, that on 4th December, 1979 he made the Savings Bank Accounts Officer believe that a sum of Rs. 250.00 is lying in your credit in D.P. Section and made the officer to pass your cheque for a like amount of Rs. 250.00 and thus found misrepresented intentionally and tried to make wrongful gain for himself and remitted the amount on the next day. It is also reported that in the S.B. Account No. 15688 relating to Mr. R. Mohanrao he has withdrawn the amounts of Rs. 700.00 on 10th December, 1970, Rs. 1,000.00 on 11th December, 1979, Rs. 3,000.00 on 18th December, 1970 and Rs. 5,500.00 on 20th December, 1979 and all these withdrawals were removed by him from the day book vouchers with an obvious intention of suppressing the evidence and this caused acts, omissions and commissions and conduct is prejudicial to the interest of the Bank. On this ground the Respondent Bank issued charge sheet under Bipartite Settlement dated 19th October, 1966 under Clause 19.5 the irregularities, commissions, commission fabrication and falsification of records, forgery amounts to gross misconduct. Further the Respondent-Bank ordered and domestic enquiry into the charges alleged against the Petitioner-workman. A regular domestic enquiry was conducted and found the Petitioner-workman guilty of all the charges levelled against him and his conduct was detrimental to the interest of the Bank. The enquiry proceedings is marked as Ex. M53. A perusal of the records would show that the Petitioner-workman has not doubt committed certain irregularities in his duties and it seen that how an Attender of the Bank can withdraw the amount from the S. B. Account when the withdrawals are monitored by various other employees including the Branch Manager. It is also said that under threat and coercion, a statement was obtained from the workman by the Management in the month of January, 1980 and that the petitioner workman has been to understand that matters will be settled if he gives his statement. Be that whatever it may be, here in this case the Petitioner-workman was removed from service on the ground of misconduct committed by him. It is seen that the petitioner-workman has misappropriated a sum of Rs. 10,900.00 in total. It is also seen that the petitioner workman was made scape goat for the acts of the Branch Manager Mr. V. V. Ramana. A perusal of all the records placed before me, I find that the punishment of dismissal is shockingly disproportionate to the gravity of the misconduct committed by the Petitioner-workman. I find that the Petitioner-workman is entitled to be reinstated into service without any back wages and other benefits. The capital punishment of dismissal from service of the workman is disproportionate.

10. In the result, the action of the Management of Andhra Bank in dismissing from service Sri P. Lakshminarayana, Sub-Staff with effect from 22-6-1983 is not justified. The workman Sri P. Lakshminarayana is entitled to be reinstated into service without back wages and other benefits.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 28th day of March, 1994.

Y. VENKATCHALAM, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined on behalf of Respondent-Management.

Witnesses Examined on behalf of Petitioner-Workman :

M.W1 V. B. Bbagawati W.W1 P. Laxminarayana.

M.W2 I. Krishna Murty

Documents marked for the Respondent-Management .

- Ex. M1 20-3-80.—Copy of the charge sheet dt. 20-3-80 issued by the Personnel & Staff Manager to P. Laxminarayana.
- Ex. M2 5-4-80.—Photostat copy of the letter submitted by P. Laxminarayana to the General Manager, Andhra Bank with regard to submission of explanation.
- Ex. M3 29-4-80.—Photostat copy of the letter issued by the Personnel Manager, Andhra Bank to P. Laxminarayana with regard to explanation.
- Ex. M4 9-5-80.—Copy of the letter issued by the Personnel & Staff Manager to P. Laxminarayana with regard to appointment of N. Rama Raju as Enquiry Officer.
- Ex. M5 17-8-81.—Copy of the letter issued by the Personnel Manager to P. Laxminarayana with regard to appointment of Sri Y. Krishna Murty, Manager, Vidyanagar Branch as Enquiry Officer.
- Ex. M6 17-8-81.—Copy of the appointment letter issued by the Personnel Manager to Y. Krishna Murty, Manager Vidyanagar Branch appointed as Enquiry Officer.
- Ex. M7 3-10-81.—Enquiry Notice issued by the Manager, Andhra Bank, Vidyanagar Branch to P. Laxminarayana.
- Ex. M8 20-10-81.—Copy of the letter submitted by P. Laxminarayana to Sri Y. Krishna Murty, Enquiry Officer.
- Ex. M9 20-11-81.—Letter submitted by P. Laxminarayana to Sri Y. Krishna Murty, Enquiry Officer.
- Ex. M10 8-11-81.—Copy of the Enquiry Notice issued by the Manager and Enquiry Officer, Andhra Bank to the General Secretary, Andhra Bank Staff Association, Hyderabad, and copy marked to P. Laxminarayana.
- Ex. M11 24-11-81.—Copy of the Enquiry notice issued by the Manager and Enquiry Officer, Andhra Bank to P. Laxminarayana.
- Ex. M12 25-11-81.—Copy of the enquiry notice issued by the Manager, and Enquiry Officer, Andhra Bank to P. Laxminarayana.
- Ex. M13 9-11-81.—Letter submitted by P. Laxminarayana to Sri Y. Krishna Murty, Manager & Enquiry Officer.
- Ex. M14 11-12-81.—Copy of the Enquiry Officer issued by the Manager and Enquiry Officer to P. Laxminarayana.
- Ex. M15 11-12-81.—Letter submitted by O. P. Ranga Rao, General Secretary, Andhra Bank Staff Association to Sri Y. Krishna Murty, Enquiry Officer, with regard to domestic enquiry against P. Laxminarayana.
- Ex. M16 21-12-81.—Letter submitted by P. Laxminarayana to Sri Y. Krishna Murty Manager & Enquiry Officer with regard to postponement of the enquiry.
- Ex. M17 24-12-81.—Copy of the enquiry notice issued by Y. Krishna Murty Manager & Enquiry Officer to Laxminarayana.
- Ex. M18/15-1-82 -do-
- Ex. M19/4-2-82 -do-
- Ex. M20/1-3-82 -do-
- Ex. M21/25-3-82 -do-
- Ex. M22/5-4-82 -do-
- Ex. M23/15-4-82 -do-
- Ex. M24/10-5-82 -do-
- Ex. M25/14-82 -do-
- Ex. M26 15-5-82.—Letter submitted by P. Laxminarayana to Sri Y. Krishna Murty, Manager & Enquiry Officer with regard to postponement of the enquiry.
- Ex. M27/15-5-82 -do-
- Ex. M27 15-5-82.—Copy of the Enquiry Officer to P. Laxminarayana.
- Ex. M28/15-5-82.—Copy of the enquiry notice issued by the Enquiry Officer to P. Laxminarayana.
- Ex. M29.—Enquiry Proceedings.
- Ex. M30 20-3-80.—Copy of the charge sheet issued by the Personnel and Staff Manager to P. Laxminarayana.
- Ex. M31.—Sheet of the S.B. Ac No. 5834 of C. Lakshminarayana Murty, Staff Andhra Bank.
- Ex. M32 26-1-79.—Photostat copy of the receipts sheet dt. 26-11-79 Andhra Bank, Chikkadpally Branch.
- Ex. M33.—Sheet of the S.B. Ac No. of Lakshminarayana.
- Ex. M34 4-12-79.—Withdrawal order form for Rs. 250.
- Ex. M35 4-12-79.—Withdrawal form for Rs. 250 along with the sheet of receipts of the Andhra Bank.
- Ex. M36 18-12-79.—Photostat copy of the Payments sheet of Andhra Bank, Hyderabad.
- Ex. M37 26-12-79.—Photostat copy of the payments sheet of Andhra Bank, Hyderabad.
- Ex. M38/7-12-78 -do-
- Ex. M39/5-12-78 -do-
- Ex. M40.—Sheet of the S.B. Ac. No. 15652 of Sri D. Narasinga Rao.
- Ex. M41 10-1-80.—Two explanations submitted by P. Laxminarayana to the Manager Andhra Bank Hyderabad Chikkadpally Branch, Hyderabad.
- Ex. M42 11-1-80.—Explanation submitted by P. Laxminarayana to the Manager, Andhra Bank Limited, Chikkadpally, Hyd.,
- Ex. M43 11-12-79.—Savings Bank with drawal order form for Rs. 500 of SB A/c No. 15435.
- Ex. M44 27-12-79.—Withdrawal order form for Rs. 1000 of SB A/C. No. 15398
- Ex. M45 27-12-79.—Withdrawal order for Rs. 900 of SB A/c. No. 7014.
- Ex. M46 29-1-80.—Letter submitted by P. Penchalaiah to the Manager Andhra Bank, Chikkadpally with regard to P. Laxminarayana.
- Ex. M47 23-10-79.—Cheque given by P. Laxminarayana to Mr. Venkata Rao for Rs. 500.
- Ex. M48 29-11-79.—Savings Bank withdrawal order form for Rs. 125 of SB A/c No. Staff.
- Ex. M49.—Sheet of the SB A/c No. 15638 of Sri R. Mohan Rao.
- Ex. M50 22-5-82.—Written arguments of Mgt. representative on the domestic enquiry against Mr. P. Laxminarayana Sub-staff (Under suspension).
- Ex. M51. 27-7-82.—Copy of the letter issued by the Manager & Enquiry Officer to P. Laxminarayana, enclosing proceedings and Management arguments.
- Ex. M52 18-8-82.—Letter submitted by P. Laxminarayana to Sri Y. Krishna Murty, Enquiry Officer.
- Ex.—Enquiry report.
- Ex. M54 26-10-82.—Copy of the letter issued by the Personnel Manager, Andhra Bank to P. Laxminarayana.
- Ex. M55 31-12-82.—Representation submitted by P. Laxminarayana to the Personnel Manager, Andhra Bank, Hyderabad.

Ex. M56 27-1-83.—Copy of the letter issued by the Personnel Manager, Andhra Bank to P. Laxminarayana with regard to confirmation of the punishment.

Ex. M57 26-3-83.—Letter submitted by P. Laxminarayana to Sri Y. Sunder Babu Asst. General Manager, Andhra Bank, Hyderabad.

Ex. M58 31-3-83.—Copy of the letter issued by the Asst. General Manager, Andhra Bank to P. Laxminarayana.

Ex. M59 4-4-83.—Representation submitted by P. Laxminarayana to Sri Y. Sunder Babu, Asst. General Manager, Andhra Bank, Hyderabad.

Ex. M60 22-6-83.—Copy of the letter issued by the Asst. General Manager, Andhra Bank to P. Laxminarayana with regard to confirmation of the punishment of dismissal.

Ex. M61 6-11-85.—Certified copy of the order in M. P. No. 55/83 in I. D. No. 28/81 passed by the Industrial Tribunal, Hyd.

Y. VENKATCHALAM, Industrial Tribunal-I

नई दिल्ली, 21 अप्रैल, 1994

का.आ. 1193.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लि. का भुरुंगिया प्रोजेक्ट, महूदा क्षेत्र-2 के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 1), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-4-94 को प्राप्त हुआ था।

[संख्या एल-20012/175/90-आई प्रार (कोल-1)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 21st April 1994

S.O. 1193.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. I, Dhanbad as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Bhurungiya Project in Mohuda Area-II of M/s. B.C.C.L. and their workmen, which was received by the Central Government on 19-4-94.

[No. L-20012/175/90-IR (Coal-I)]
C. GANGADHARAN Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d)(2-A) of the Industrial Disputes Act, 1947.

Reference No. 243 of 1990

PARTIES :

Employers in relation to the management of Bhurungiya Project in Mohuda Area II of M/s. BCCL.

AND

Their Workmen

PRESENT :

Shri P. K. Sinha,
Presiding Officer.

APPEARANCES :

For the Management.—Shri H. Nath, Advocate.

For the Workmen—Shri K. Chakraborty, Advocate.

STATE : Bihar.
1114 GI/94—5.

INDUSTRY : Coal.

Dated, the 11th April, 1994

AWARD

By Order No. I-20012/175/90-IR. (Coal-I), dated the 1st October, 1990, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal :

“Whether the management of Bhurungiya Project in Mohuda Area II of M/s. BCCL is justified in dismissing Sri Baiyanath Rai ex-General Mazdoor from service w.e.f. 12-4-89? If not, to what relief the said workman is entitled?”

2. The concerned workman was dismissed from service on the allegation that he had continuously been absenting from his duty with effect from 20-1-89, and was also absent not only during the domestic enquiry, but also till 12-4-89, with effect from which date he was ultimately ordered to be dismissed from service on the basis of the report of the Enquiry Officer.

3. In its written statement the sponsoring Union has submitted that the workman had absented due to unavoidable circumstances but the information was sent to the management by the concerned workman through his co-worker. It has been submitted that dismissal was illegal and against the principle of natural justice. Prayer was made to allow reinstatement of the workman with full back wages.

4. The management in its reply took the stand that a workman was liable to dismissal under provision of Clause 17(1)(n) of the Model Standing Orders, for remaining absent for more than ten days without information or permission. According to the management, when the workman remained absent for more than ten days a charge-sheet dated 1-3-89 was issued and sent to his address through registered post. Since no explanation was received, another notice dated 10-3-89 was sent to the workman to attend domestic enquiry on 18-3-89, which notice was received with endorsement of postal department “not met”.

5. It may be mentioned that two registered letters returned with the postal endorsement are on the record.

6. As per written statement of the management, the enquiry was conducted ex-parte in which sufficient evidence was led to prove the workman guilty of the aforesaid misconduct on the basis of which he was ultimately dismissed from service with effect from 12-4-89.

7. In para 21 of the written statement the management has claimed that twice earlier also the workman had absented from duty without permission and sufficient cause (dates given) for which he was warned by the Project Officer by his two different letters.

8. It was further been mentioned that though the workman was dismissed with effect from 12-4-89, yet the sponsoring Union had moved the Asst. Labour Commissioner (Central), Dhanbad only on 20-12-89 which showed that the workman was not interested in his job. It has been argued in the written statement that the discretion of punishment lies with the management.

9. It may be mentioned here that by order dated 26-8-89 the learned predecessor had held that the domestic enquiry was conducted fairly and properly. As a matter of fact, in course of hearing of the preliminary issue, the sponsoring Union had conceded that the domestic enquiry was held fairly and properly.

10. The points for consideration are, firstly, whether the conclusion arrived at by the Enquiry Officer in face of the evidence adduced can be held to be just and proper and, secondly, if just and proper, whether the punishment imposed can be held to be just and fair.

11. In the written statement the sponsoring Union has not denied that the workman had remained so absent without permission of the management. It has vaguely been mentioned that the workman had sent information through his co-worker. Neither the name of the co-worker has been mentioned, nor it has been stated as to whether a verbal or written information was sent. However, the evidence of

the management in the domestic enquiry proves satisfactorily that no written information was received. Even in course of argument this has not been denied on behalf of the sponsoring Union that the workman had not absented beyond a period of ten days. In view of this the evidence of the management need not be discussed in great details.

12. The Presiding Officer had given his statement before the Enquiry Officer and had proved the charge-sheet (Ext. M-2). The next witness Sri A. N. Prasad, Despatch Clerk deposed that the charge-sheet was sent to the workman through registered post. He produced the Despatch Register (Ext. M-4). He also deposed about the notice of enquiry sent to the workman, posted receipt of which was marked Ext. M-4 and the Despatch Register was marked Ext. M-6.

13. The next witness is Sri S. Chatterjee, Bill Clerk, who has proved that as per Form 4-A Register the concerned workman was absencing since 20-1-89. This register was marked Ext. M-7.

14. Sri D. Kumar is the next witness who was working as Leave Sick Clerk. He has proved that he did not receive any leave or sick letter from the concerned workman, nor any leave was noted in the G. H. Register Ext. M-8).

15. Ext. M. 8 (as marked by the Tribunal) is the order of dismissal with effect from 12-4-89 on the basis of the enquiry report. This letter is dated 12-4-89.

16. There is nothing on the record to show that the concerned workman had come back from his absence till 12-4-89. Therefore, at least his absence from 20-1-89 upto 12-4-89 without information or permission stands proved which is a misconduct under Clause 17(1)(n) of the Model Standing Orders.

17. The main thrust of argument on behalf of the sponsoring Union was that this being first such mistake of the workman, as proved during the domestic enquiry, the management should have taken a lenient view of the matter and should have awarded some lesser punishment instead of dismissal, which lesser punishments have been provided in Clause 17 of the Model Standing Orders itself like imposition of fine or stopping his increment.

18. Shri H. Nath, learned counsel on behalf of the management has very strongly argued that the materials on the record show, as claimed by the management in its written statement, that earlier also this workman had indulged in similar nature of misconduct hence he was rightly punished with dismissal, his being a habitual absentee.

19. I agree that had it been proved in the domestic enquiry that the workman was a habitual absentee, extreme punishment of dismissal was justified.

20. The misconduct of habitual absence without leave or without sufficient cause is a misconduct under Clause 17(1)(d) of the Model Standing Orders. But the chargesheet, which was marked Ext. M-1 in the enquiry, mentions misconduct under Clause 17(1)(n) only. In the enquiry notice, also, marked Ext. M-2 in the enquiry, the charge under the aforesaid clause has alone been mentioned. Therefore, this workman was not even charged for misconduct described under Clause 17(1)(d) of the Model Standing Orders.

21. My attention has been drawn towards certain papers in proof of previous conduct of the workman. Evidently this had not been produced before the Enquiry Officer hence were not marked exhibits there. However, these photo copies have been placed in the Tribunal and were marked Exts. M-1 to M-1/3 by the learned predecessor. Ext. M-1, dated 1-8-87, is an intimation sent to the concerned workman that he was absencing since 5-12-86 without information, hence he should immediately join. Ext. M-1/1 is warning letter dated 6-7-88 for his absence from 29-6-88 to some date in July, 1988, though he was allowed to join. Ext. M-1/2 is a charge-sheet for absence from 15-7-88. Ext. M-1/3 is a warning letter for his unauthorised absence in which he was again allowed to join his duty with effect from 31-8-88.

22. But these documents were not brought on the record in course of the domestic enquiry which fact is also evident from the enquiry report in which neither these documents have been discussed nor even his previous conduct. No

witness of the management said a word before the Enquiry Officer about such previous conduct, or misconduct, of the workman. Not having brought these documents on the record in course of enquiry which have been produced for the first time in the Tribunal, provision of Section 11-A of the Industrial Disputes Act would bar consideration of these documents. This Tribunal is precluded from considering these documents relating to the past conduct of the workman.

23. Therefore, what has been proved by the materials on record is one such unauthorised absence by the workman which commenced from 20-1-89 and had continued at least till 12-4-89, a period of a bit less than three months.

24. Answering the first point under consideration it must be held that the Enquiry Officer was correct in his finding that the charge levelled against the workman was proved by the management through its evidence.

25. In so far as the punishment is concerned, what the materials on the record suggest is that this was proved to be the first such misconduct of the workman. No doubt, such unauthorised absence can not be taken lightly and the offender must be exposed to adequate punishment. But when only first such misconduct has been proved in the domestic enquiry, in my opinion for the first time some minor but adequate punishment should be awarded so that the workman gets atleast one chance to mend his ways. If he refused to mend his ways, then the next time such misconduct is proved, the extreme punishment would be readmissible one.

26. Therefore, I feel that the workman should be allowed atleast one chance to mend himself while, at the same time he should be awarded proper punishment.

27. The question that now arises is what could be the adequate punishment. This workman is out of service since 12-4-1989, almost for a period of five years. From the fact that the dispute could be raised before the Asstt. Labour Commissioner (Central), Dhanbad, only in December, 1989 also shows that the workman did not come back immediately or soon after his dismissal. Naturally the workman is precluded from placing his defence as the domestic enquiry was held ex-parte and at this stage no fresh evidence can be brought on the record. Taking everything into account, in my opinion, if the workman is allowed to be reinstated but without any back wages, that would be adequate punishment for his misconduct which has been proved, in the domestic enquiry, to be his absence for less than three months.

28. In the result following is the award :—

The management of Bhurungiya Project in Mohuda Area II of M/s. B. C. C. Ltd. was not justified in dismissing Bafinath Rai, Ex-General Mardoor from service with effect from 12-4-1989. In view of the discussion as above the concerned workman shall be reinstated in his job within a month of the award becoming enforceable but he will not be entitled to get any back wages.

In the circumstances of the matter there will be no order as to the cost.

P. K. SINHA, Presiding Officer

नई दिल्ली, 27 अप्रैल, 1994

का.आ. 1194 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, इण्डियन एयरलाइन्स के प्रबन्धन के संबद्ध नियोजक और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-4-94 को प्राप्त हुआ था।

[संख्या-एल-11012/7/89-आई आर (त्रिविध)/आई आर (कोल-1)]

सी. गंगाधरन, डैम्क अधिकारी

New Delhi, the 27th April, 1994

S.O. 1194.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Indian Airlines and their workmen, which was received by the Central Government on 25-4-1994.

[No. L-11012/7/89-IR(Misc.)/IR(Coal-I)]
C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 95/89

In the matter of dispute between :

Shri Om Parkash s/o Shri Jagge Ram R/o L-128, J. J. Colony, Shakur Pur, Delhi-110034.

Versus

The Chief Engineering Manager, Indian Airlines, Palam Airport, New Delhi-110010.

APPEARANCES :

Shri R. C. Verma—for the workman.

Shri Indra Makwana—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-11012/7/89-IR(Misc.) has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of the Indian Airlines, New Delhi in dismissing Shri Om Parkash S/o Shri Jaggeram, Sweeper from service w.e.f. 31-10-86 is justified. If not, what relief is the workman entitled to?"

2. The workman in his statement of claim alleged that he was appointed as a Sweeper in 1963 by the management. His services were regularised in 1970. He was drawing Rs. 1200 per month as his salary including allowances. One of his brother died in 1982 and after informing orally to Govind Singh Labourer he went to his village. His three other brothers also died in 1982 and he lost his mental balance and could not come for duty upto October, 1983. Nor could send any information. He resumed his duty in October 1983 and was given a show cause notice dt. 25-3-84 and another charge sheet on 5-7-85 which was replied by the workman. Enquiry proceedings were started on 25-7-86 in which the workman had informed the Enquiry Officer that he knew only Hindi and not English Language. Whatever was asked from him in Hindi was replied properly and he did not know what transpired between the Enquiry Officer and the other officials who were talking in English. His services were terminated on 29-10-86 and thereafter he went to the Conciliation Officer. No settlement was arrived at hence this reference.

3. The Management in its preliminary objections in the written statement alleged that the reference made by the Ministry of Labour was illegal and unjustified, as the workman had himself pleaded guilty of the misconduct. The workman was drawing Rs. 1497 PM at the time of his termination. The rest of the para regarding death of his brothers were denied for want of knowledge by the Management. A charge sheet was served on the workman for his remaining absent from duty for 138 days during the year 1982 and for 118 days during the year 1983. An additional charge sheet dated 7-8-85 was served on the workman for unauthorised absence for 239 days during the year 1984. No reply to the aforesaid charge sheet was submitted by the workman and the management constituted domestic enquiry to look into the charges. The enquiry was conducted by S. K. Kapoor, Chief Technical Officer. He did not plead guilty to the charge and did not avail of the services of a 'friend' in the domestic enquiry which he was specifically asked. After the receipt of the Enquiry Report the Competent Authority of the Management issued a show cause notice

calling upon him as to why punishment of dismissal from service should not be imposed. After considering the reply of the workman which was found not satisfactory his services were terminated. The management examined Shri H. R. Kirar MW1 and Shri G. S. Raghvan MW2 in support of its evidence while the workman himself appeared as his own witness as WW1.

4. I have heard representatives for the parties and have gone through the record.

5. The Management representative in his arguments has urged that it was the duty of every official to continuously attend to his duties and in case of his absence from duty he was required to furnish satisfactory reasons failing which action could be taken against him. In this case the workman himself has alleged that he did not inform the management about his absence from duty for a continuous spell of more than 200 days. He has also not produced any evidence or documentary proof regarding the death of his brother or any medical certificate regarding his mental imbalance which could be considered as a ground while granting punishment to him on the basis of the enquiry report. The workman has also not led any evidence in the court on these points. Nothing has been alleged by the workman either in his statement of claim or in his statement in the court regarding any irregularity having been committed by the Enquiry Officer during the enquiry proceedings. He was asked to have the assistances of any of his friend during the enquiry which he did not avail off. The workman admitted the absence from duty and gave no satisfactory reason. As an official of the management he was duty bound to inform regarding his absence and if he was so much involved in his family problems any body else on his behalf from his family or village could have informed the management but nothing was done, hence there was no ground on the basis of which it could be said that his absence from duty was for some satisfactory reason or stood explained.

6. The workman representative on the other hand has alleged that it was not possible for him to inform the Management about his absence from duty because of his involvement in the family problems. He has further urged that the workman did not know English and so he could not understand the enquiry proceedings conducted in English.

7. After having gone through the points urged before me I am of the opinion that there is nothing on record to suggest any irregularity conducted by the management/Enquiry Officer in conducting the enquiry proceedings. No irregularity or illegality has been pointed out by the representative for the workman which could lead to the conclusion that the enquiry was not fair and proper. It can not be believed that a person could be absent for such a long time and there was no one to inform the management regarding his absence. Moreover, a charge sheet has been served to the workman regarding his absence from duty in the year 1984. He had resumed duty in 1983 and it was again in 1984 that he absented for a long period of 239 days. The death of his brothers as stated by him and his representative took place somewhere in 1982. There was no mention of any family casualty in the year 1984. For that charge sheet also enquiry was conducted and the workman was found guilty of the charges. No explanation for this has come on record and I, therefore, am of the opinion that the management has conducted a fair and proper enquiry against the workman in this case.

8. After hearing the representative for the parties I am of the view that the services of the workman have been rightly terminated and the action of the management was fully justified. Parties are left to bear their own costs.

26th February, 1994.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 28 अप्रैल, 1994

का.ग्रा. 1195:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मै. भारत कोकिंग कोल लि. का सिजुआ क्षेत्र

सं.-5 के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं.-1), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-94 को प्राप्त हुआ था।

[संख्या एल-20012/71/92-आई आर (कोल-1)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 28th April, 1994

S.O. 1195.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Loyabad Colliery of M/s. B.C.C.L. and their workmen, which was received by the Central Government on 26th April, 1994.

[No. L-20012/71/92 IR (Coal-I)]

C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 138 of 1992

PARTIES :

Employers in relation to the management of Loyabad Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen.

PRESENT :

Shri P. K. Sinha, Presiding Officer.

APPEARANCES :

For the Employers—Shri H. Nath, Advocate.

For the Workmen—None.

STATE : Bihar.

INDUSTRY : Coal

Dated, the 22nd April, 1994

AWARD

By Order No. L-20012(71)/92-I.R. (Coal-I) dated 2nd December, 1992 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Loyabad Colliery in treating the date of birth of Shri Bali Mahato as 1934 is correct? If not, to what relief the workman is entitled?"

2. This reference was registered in the Tribunal on 15th December, 1992. From the reference it appears that a copy of the same was sent to the Secretary of the sponsoring Union. But since none appeared till 15th February, 1994, another notice was ordered to be sent, and was sent on 18th February, 1994 to the sponsoring Union through registered post.

3. About two months have elapsed, but today also none has appeared on behalf of the sponsoring Union.

4. It now appears that the sponsoring Union is not interested in prosecuting this reference and that it has now no dispute with regard to the reference.

5. Therefore, a 'no dispute award' is rendered in the present case.

P. K. SINHA, Presiding Officer

नई दिल्ली, 22 अप्रैल, 1994

का.आ. 1196—केन्द्रीय सरकार ने यह समाधान हो जाने पर कि लोकाहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (क) के उपखण्ड (IV) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.आ. 2448 दिनांक 22 अक्टूबर, 1993 द्वारा किसी भी तेल क्षेत्र में सेवा का उक्त अधिनियम के प्रयोजनों के लिए 23 अक्टूबर, 1993 से छह मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकाहित में उक्त कालावधि को छह मास की आर कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः अब औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 2 के खण्ड (क) के उपखण्ड (VI) के परन्तुक प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 23 अप्रैल, 1994 से छह मास की आर कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[संख्या एस-11017/5/85-डी 1(ए)]

एन.एस. पराशर, अवसर सचिव

New Delhi, the 22nd April, 1994

S.O. 1196.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provision of sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour, S.O. No. 2448 dated the 22nd October, 1993, the service in any Oil field to be a public utility service for the purposes of the said Act, for a period of six months from the 23rd October, 1993;

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares the said industry to be a public utility service for the purpose of the said Act, for a further period of six months from the 23rd April, 1994.

[No. S-11017/5/85-D.I(A)]

S. S. PRASHER, Under Secy.

नई दिल्ली, 22 अप्रैल, 1994

का.आ. 1197—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आचिंशालोजिकल सर्वे आफ इण्डिया, गोआ के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बेंगलूर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-4-94 को प्राप्त हुआ था।

[संख्या एल-42012/60/90-आई आर (चीयू) (भाग)]

के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 22nd April, 1994

S.O. 1197.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Archaeological Survey of India, Goa and

their workmen, which was received by the Central Government on 21-4-1994.

[No. L-42012/60/90-IR(DU) (Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM LABOUR COURT, BANGALORE

Dated this 15th day of April, 1994

PRESENT :

Sri M.B. Vishwanath, B.Sc., B.L., Presiding Officer

CENTRAL REFERENCE No. 73/90

I Party

Sri N. D. Dindoor, Hosapodnur village, Indi Taluk, Bijapur-586101

V/s

II party

1. The Dy. Supdtg. Archaeologist Museums, Archaeological Survey of India, Velhe Goa Goa-586101.
2. The Asst. Supdtg. Archaeologist, Archaeological Survey of India, Museums, Bijapur-586101.

AWARD

In the reference made by the Hon'ble Central Govt. by its order No. L. 42012/60/90-IR (DU) Dt. 30-11-90 under Sec. 10(2A)(1)(d) of I. D. Act the point for adjudication as per schedule to reference is :-

"Whether the action of the Archaeological Survey of India (Museums) Velhe, Goa, in terminating the services of Sri N. D. Dindoor, Ex. watchman, is justified? If not, to what relief the workman is entitled to?"

2. It is not necessary to summarise the claim petition and the counterstatement in view of the compromise entered into between the I party workman and the II party.

3. On 6-4-94 this reference was taken up at Hubli camp. The Deputy Superintendent Archaeologist Archaeological Survey of India, Museums branch, Western Region, Velhe Goa had sent to this Tribunal a letter dt. 28-3-94 enclosing the appointment order dt. 6-11-93 appointing the I party as Museum Attendant w.e.f. 12-11-93. This letter along with order was received at Bangalore by this Tribunal on 2-4-94.

4. When this case was taken up on 6-4-94 at Hubli camp the Asst. Superintendent Archaeologist Sri Kulkarni of the II party was present. He filed the xerox copy of the representation dt. 21-10-93 submitted by the I party workman. In this representation praying for appointment to group 'D' post the I party workman has stated that he will withdraw the case from this Tribunal unconditionally and will forgo backwages and back service if he is appointed to any group 'D' post.

5. From the facts stated above it is clear that the I party workman has been appointed as per the appointment order dt. 6-11-93. In his representation dt. 21-10-93 I party has stated that he would not press for backwages and continuity of service (back service). Since the I party has been appointed, the reference is rejected. Award passed accordingly. Submit to Government.

(Dictated to Stenographer, typed by him, corrected, signed by me on this 15th day of April 1994)

M. B. VISHWANATH, Presiding Officer

नई दिल्ली, 25 अप्रैल, 1994

का.आ. 1198 :—जबकि मद्रास पत्तन न्यास, मद्रास के प्रबंधन और उनके कर्मचारों, जिनका प्रतिनिधित्व मद्रास पत्तन न्यास कर्मचारी संघ, संख्या-9, द्वितीय लाइन बीच, मद्रास-600001 द्वारा किया जा रहा है, के बीच एक औद्योगिक विवाद विद्यमान है;

और जबकि उक्त प्रबंधन और उनके कर्मकार, जिनका प्रतिनिधित्व मद्रास पत्तन न्यास कर्मचारी संघ द्वारा किया जा रहा है, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10-क को उपधारा (i) के अंतर्गत एक लिखित करार द्वारा उक्त विवाद को विवाचन हेतु भेजने पर सहमत हो गये हैं, और उक्त विवाचन करार की एक प्रति केन्द्रीय सरकार के पास भेज दी गयी है;

अतः, अब, उक्त अधिनियम की धारा 10-क को उपधारा (3) के अनुसरण में केन्द्रीय सरकार उक्त करार को प्रकाशित करती है।

करार

(औद्योगिक विवाद अधिनियम, 1947 की धारा 10-क के अंतर्गत)

पक्षकारों के नाम

नियोजक के प्रतिनिधि

अध्यक्ष,
मद्रास पत्तन न्यास,
राजाजी सलाय,
मद्रास-600001

कर्मचारों के प्रतिनिधि

अध्यक्ष,
मद्रास पत्तन न्यास कर्मचारी संघ,
संख्या-9, द्वितीय लाइन बीच
मद्रास-600001

पक्षकार निम्नलिखित विवाद को विवाचन के लिए श्री एस. गणेशन, सेवा निवृत्त उपाध्यक्ष मद्रास पत्तन न्यास तथा श्री के.ई. वर्धन, अध्यक्ष मद्रास पत्तन न्यास कर्मचारी संघ के पास भेजने को सहमत हैं।

(1) विवाद के विशिष्ट मामले

"क्या मद्रास पत्तन न्यास के अध्यक्ष द्वारा दिनांक 9-4-90 और 27-7-93 को सचिव, भूतल परिवहन मंत्रालय को लिखे गये पत्र संख्या आई आर 7/30561/89-एस में वर्णित समझौता ज्ञापन, अनुलग्नक

“क”, में विहित लाभों तथा संबंधित मामलों का विस्तार किया जाए अथवा नहीं। यदि हाँ तो कर्मकार किस अनुतोष के हकदार हैं” ?

(2) विवाद से संबंधित पक्षकारों का व्योम (इसमें अंतर्गत प्रतिष्ठान अथवा उपक्रम का नाम और पता शामिल है) :

1. अध्यक्ष, मद्रास पत्तन न्याय,
राजाजी मनाय, मद्रास-600001
और
2. अध्यक्ष, मद्रास पत्तन न्याय कर्मचारी संघ,
संख्या 9, द्वितीय लाइन बीच, मद्रास-600001

उपक्रमों से नियोजित 9,956
प्रभावित कर्मचारियों की (अधिकांशों को छोड़कर)
संख्या

विवाद से प्रभावित लगभग 145
अथवा प्रभावित होने
वाले कर्मचारियों की सं.

हम इस बात से भी सहमत हैं कि विवाचन बोर्ड का निर्णय हम दोनों पर बाध्यकारी होगा।

विवाचन अपना पंचाट तीन महीने की अवधि के अन्दर अथवा हमारे बीच हुए लिखित करार द्वारा आगे बढ़ाई गई अवधि में होगा। यदि उपरोक्त अवधि के भीतर पंचाट नहीं किया जाता है तो विवाचन के लिए भेजा गया विषय अपने आप निरस्त हो जाएगा और हम नए सिरे से विवाचन के लिए बातचीत करने के लिए स्वतंत्र होंगे।

पक्षधन के प्रतिनिधि	संघ के प्रतिनिधि
1. ह./- अध्यक्ष, मद्रास पत्तन न्याय, राजाजी मनाय, मद्रास-600001	ह./- (एस सी सी एंडजी पिब्लै) अध्यक्ष, मद्रास पत्तन न्याय कर्म- चारी संघ

विवाचक की सहमति

1. सेवा में,
अध्यक्ष,
मद्रास पत्तन न्याय,
मद्रास-600001

महोदय,

विषय : —विवाद और स्पाइलेज क्लीनिंग कंट्रैक्ट कर्म-
चारों से संबंधित विवाद मद्रास पत्तन न्याय, मद्रास तथा
और स्पाइलेज क्लीनिंग कंट्रैक्ट कर्मचारों, जिनका प्रति-

निधित्व मद्रास पत्तन न्याय कर्मचारी संघ कर रहा है,
के बीच विवाद का विवाचन।

में उपर्युक्त विवाद में विवाचक के रूप में स्थानापन्न
रूप से कार्य करने के लिए अपनी सहमति अधिसूचित करता
है।

भवदीय
ह./-
(एस. गणेशन)

2. सेवा में,
अध्यक्ष,
मद्रास पोर्ट ट्रस्ट
मद्रास-600001
महोदय,

विषय : और स्पाइलेज क्लीनिंग विवाचन से सम्बन्धित
विवाद मद्रास पोर्ट ट्रस्ट तथा मद्रास पोर्ट ट्रस्ट
कर्मचारी यूनियन द्वारा प्रतिनिधित्व किए गए
और स्पाइलेज क्लीनिंग ठेका श्रमिकों के मध्य
विवाद।

में उपर्युक्त विवाद में मद्रास पोर्ट ट्रस्ट कर्मचारी यूनियन
के प्रतिनिधि के रूप में विवाचक के रूप में कार्य करने के
लिए अपनी सहमति अधिसूचित करता है।

आपका
ह./-
के.ई. यधन,

[फाइल सं. 33013/1/94-आई आर (विधि)]
बी.ए.ए. डेविड, डेस्क अधिकारी

New Delhi, the 25th April, 1994.

S.O. 1198.—Whereas an industrial dispute exist between the management of Madras Port Trust, Madras and their workmen represented by Madras Port Trust Employee's Union. No. 9, Second Line Beach, Madras-600001;

And whereas, the said Management and the workmen represented by Madras Port Trust Employee's Union have by written agreement under sub-section (i) of Section 10-A of the Industrial Disputes Act, 1947 (14 of 1947), agreed to refer the said dispute to arbitration and have forwarded to the Central Government a copy of the said arbitration agreement;

Now therefore, in pursuance of sub-section (3) of Section 10-A of the said Act, the Central Government hereby publishes the said agreement.

AGREEMENT

(Under Section 10-A of the Industrial Disputes Act, 1947)

BETWEEN**NAME OF THE PARTIES**

Representing Employer:	Representing Workmen:
The Chairman, Madras Port Trust Rajaji Salai, Madras-600001.	The President, Madras Port Trust Employees' Union, No. 9 Second Line Beach, Madras-600001.

It is hereby agreed between the parties to refer the following dispute to the arbitration of Sh. S. Ganesan Retired Deputy Chairman, Madras Port Trust and Sh. K.E. Varadhan, President, Madras Port Trust Employees' Union.

- (i) Specific matters in dispute: "Whether the benefits and the related matters contained in the Memorandum of understanding as per Annexure 'A' referred to in the Madras Port Trust Chairman's letter No. IR7/35061 89/S, dated 2-4-90 and 27-7-93 to the Secretary Ministry of Surface Transport be extended or not. If yes, to what relief are the workmen entitled?"

(ii) Details of the parties to the disputes (including the name and address of the establishment or undertakings involved):

1. The Chairman, Madras Port Trust, Rajaji Salai Madras-600001.

AND

2. The President, Madras Port Trust Employees' Union, No. 7, Second Line Beach, Madras-600001.

Total Number of workmen employed in the Undertaking affected: 9,956 (including Officers).

Estimated number of workmen affected or likely to be affected by the dispute: About 145

We further agree that the decision of the arbitrator is binding on us.

The Arbitrator shall make his award within a period of three months or within such further time as is extended by mutual agreement between us in writing. In case the Award is not made within the period afore-

mentioned, the reference to arbitration shall stand automatically cancelled and we shall be free to negotiate for fresh arbitration.

On behalf of the management:

On behalf of the Union:

Sd/-

Sd/-

1. Chairman, Madras Port Trust, Rajaji Salai, Madras-600001

(S.C.C. Anthony Pillai)
President,
Madras Port Trust Employees' Union.

CONSENT OF THE ARBITRATOR

2. The Chairman, Madras Port Trust, Madras-600001.

Sir,

Sub : Disputes—Dispute pertaining to Ore Spillage Cleaning Contract Workers—Arbitration in the dispute between the Madras Port Trust, Madras and the Ore Spillage Cleaning Contract Workers, represented by the Madras Port Trust Employees' Unions.

I hereby notify to you my willingness to officiate as an arbitrator in the above mentioned dispute.

Yours Sincerely,

Sd/-

(S. Ganesan)

2.
To

The Chairman,
Madras Port Trust
Madras-600001

Sir,

Sub : Disputes—pertaining to Ore Spillage Cleaning Arbitration—Dispute between Madras Port Trust and the Ore Spillage Cleaning Contract Workers Represented by the Madras Port Trust Employees' Union.

I hereby notify my willingness to officiate as an Arbitrator in the above named Dispute, as a nominee of the Madras Port Trust Employees' Union.

Yours sincerely,

(K. E. VARADHAN)

[File No. 33015/1/94-IR (Misc.)]

B. M. DAVID, Desk Officer

नई दिल्ली, 28 अप्रैल, 1994

का.आ 1199।—आध्यात्मिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, उसे दिनांक 26-4-94 को प्राप्त यूरेनियम कॉर्पोरेशन ऑफ इंडिया लि. प्रबंधन के संबंध में उनके कर्मचारों और नियोक्ताओं के बीच हुये औद्योगिक विवाद के संबंध में अनुबंध में यथोक्त केन्द्रीय सरकार औद्योगिक अधिकरण धनबाद के पंचाट की प्रकाशित करती है।

सं. एल-29012/13/87—डी III (बी)]
बी.एम. डेविड, डेस्क अधिकारी

New Delhi, the 28th April, 1994

S.O. 1199.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Uranium Corporation of India Ltd. and their workmen, which was received by the Central Government on 26th April, 1994.

[No. L-29012/13/87-D.III(B)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 50 of 1988

PARTIES:

Employers in relation to the management of Uranium Corporation of India Ltd., Jaduguda, District Singhbhum.

AND

Their workmen.

APPEARANCES:

On behalf of the workmen—Shri S. Bose, Vice-President, I.N.M.W.F.

On behalf of the employers—Shri P. R. Rakshit, Advocate.

STATE: Bihar.

INDUSTRY: Uranium

Dhanbad, the 18th April, 1994

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-29012/13/87-D.III(B), dated the 2nd March, 1988.

SCHEDULE

"Whether the action of the management of M/s. Uranium Corporation of India Ltd. Jaduguda Mines, District Singhbhum, Bihar in dismissing Shri Jogeshwar Prasad, Helper-A from service w.e.f. 26th April, 1982 is justified? If not, what relief the said workman entitled to?"

2. The action of the management of M/s. Uranium Corporation of India Ltd. Jaduguda Mines, District Singhbhum Bihar has been challenged in dismissing Shri Jogeshwar Prasad Helper-A from service with effect from 26th April, 1982.

3. The concerned workman filed W.S. stating that he was a permanent employee of UCIL Jaduguda in the post of Helper A in the mines.

4. Sometimes in the year 1977 the management issued a charge sheet to a number of workmen including the concerned workman and the steps taken by the management was done by the Managing Director and thus the process of disciplinary action was vitiated since the appellate authority became the person involved in the premier stage of disciplinary proceeding which was edited by subordinate officers and the workmen lost their right of ventilating any grievance against the improper enquiry. The management dismissed the concerned workman of the charges which were not proved in the Court of Judicial Magistrate 1st Class, Jamshedpur. It was stated that the action of the management was arbitrary illegal and void ab initio. It was prayed that the concerned workman be reinstated with full back wages for the entire period of his idleness.

5. The management by filing W.S. has given out the details of the occurrence of the incident which took place on 21st March, 1979 in which the concerned workman actively participated.

6. The management also took some preliminary issue for adjudication involving law points. It was stated that the Tribunal has got no jurisdiction to adjudicate this reference and the Central Government was not the appropriate Government as envisaged under Section 2(a) of the I.D. Act. It was also contended that the management corporation was not an 'Industry' within the meaning of Section 2(j) of the Act.

7. It was stated that the concerned workman never approached the management nor he filed any representation for redressal of his grievance after he was held guilty and that being the position the reference is incompetent and premature. It was also stated that the industrial dispute was raised after a long time without any proper justification and that being so the reference was too stale to be adjudicated upon.

8. Regarding facts of the cases it was stated that the concerned workman Shri Jogeshwar Prasad committed various acts of misconduct within the premises of the management company as detailed in the charge sheet. It is stated that on 21st March, 1979 at about 10.45 A.M. while Dr. A. K. Rakshit C.M.O. was examining patient at the hospital in Room No. 13 the concerned workman along with one Mithulal Gope and others forcibly entered the room in a riotous manner.

9. Shri Prasad and others assaulted Dr. A. K. Rakshit in Room No. 13 and dragged him outside the room. They abused the doctor in filthy language. Dr. Rakshit ran towards the female wards for safety when the concerned workman chased and assaulted him. Dr. Rakshit fell down on the ground near a Pipal tree and then the concerned workman attempted to hit him with iron rod. Again the concerned workman and others dragged Dr. Rakshit out of the female ward and assaulted him. The concerned workman who threw stone aiming at Dr. Rakshit as a result of which one glass pane of the Cabin No. 3 was badly smashed. In this way the concerned workman continued assaulting Dr. Rakshit till the Security Personnel came to his rescue. In this way the concerned workman and others committed misconduct as per certified standing order under clauses 42(i), 42(p) and 42(bb).

10. The concerned workman was asked to submit his show cause in respect of the aforesaid charges. He submitted reply on 5th May, 1979 which was considered by the competent authority. The concerned workman denied charges pleading inter alia his innocence. But the management being dissatisfied with the reply ordered for domestic enquiry. A domestic enquiry was held in which the concerned workman participated. He was found guilty and accordingly the enquiry report was submitted. At this stage it may be mentioned that the fairness and propriety of the domestic enquiry has been held to be fair and proper and in accordance with the principles of natural justice.

11. Now the question for consideration would be as to whether there were materials sufficient enough before the Enquiry Officer to hold the concerned workman guilty of the charges as said above, and if so whether the punishment inflicted was proportionate to the alleged misconduct?

12. First of all I would take up the preliminary matters which were raised and canvassed at the time of argument. It was urged that the management corporation was not an 'Industry' and within the meaning of Sec. 2(j) of the I.D. Act. In this connection the most memorable decision of Bangalore Water Supply & Sewerage Board, etc. ver. A. Rajappa and others, as reported in LLJ 1978 at page 349 can be relied upon wherein their Lordships of the Hon'ble Supreme Court held that any organisation or the institutions having fulfilled triple tests cannot be exempted from the scope of Section 2(j) of the I.D. Act. I find that UCIL has got a systematic operation and it is run on account of active cooperation between the management and the workmen. Again the production of Uranium is made to satisfy the human wants and wishes. It was urged that Uranium was not sold in the market. It is meant for nuclear power generation and other research activities. The Hon'ble Court held that profit making or gainful objective is irrelevant. I am to hold that UCIL is an 'Industry'.

13. No limitation has been prescribed under the I.D. Act and hence there can be no question of any dispute going stale.

14. The workman after his dismissal never raised any demand for reinstatement before the management and therefore the reference was said to be premature and incompetent. It was contended by the learned representative of the workmen that the order of dismissal in this case was passed by the Chairman-cum-Managing Director and in that view of the matter the concerned workman was not left with any option for redressal of his grievances. The question was as to where he could have gone when the very order of dismissal was passed by the Appellate authority. The learned counsel for the management submitted that the concerned workman could have gone to the Board of Directors. I think the contention raised by and on behalf of the workman should be sustained. On this ground the reference cannot be branded as premature or incompetent. The order of dismissal is Ext. M-9.

15. Admittedly, the concerned workman was under the employment of the management corporation as Helper (A). He was alleged to have committed serious misconduct from 21st March, 1979 for which he was issued regular charge sheet by the competent authority. He was held guilty by the Enquiry Officer. The fairness of the enquiry was conceded to by the learned representative for the workman. This does not mean that a prima facie misconduct has been proved. While considering the fairness of domestic enquiry the Court is simply required to examine whether the concerned workman was given opportunity to cross-examine the witness and to adduce his own evidence. Whether the principles of natural justice was applied by the Enquiry Officer or not?

16. The concerned workman was issued charge sheet and from the very reading of the same it is disclosed that on the relevant date and time Dr. A. K. Rakshit, the Chief Medical Officer was on duty examining the outdoor patient in Room No. 13. He was hurled filthy abuses, brutally assaulted by the concerned workman and his associates. He was assaulted in the room itself and then dragged out of it. Dr. Rakshit ran towards the female ward and again he was chased and assaulted. He fell down near a tree and then the concerned workman attempted to assault him with iron rod. On his he was again dragged from the female ward and assaulted. Dragging out of the room means he must have been caught physically and then pushed out. The question is that the doctor was physically caught at several point of time during the course of occurrence then rioter could have assaulted him in the manner they liked. The question does not arise as to why the concerned workman will take any attempt to assault him with iron rod or to throw any stone to assault him. Really there was no question of taking any attempt. The concerned workman was in a position to assault him when the doctor was caught. All these narrations of the incident does not sound very much convincing. Since the doctor was already in physical grip of the assailants they could have assaulted him in any way and there was no use of any throwing any stone or taking any attempt to assault him with iron rod. Prima facie in the given circumstances these are all exaggerations.

17. Now in order to appreciate these facts we can have a look to the evidence of Dr. A. M. Yadav who examined injuries of the person of Dr. Rakshit. He had found abrasion

in the left and right knee. Mr. Yadav stated in his evidence that these injuries could have been caused by fall. In the charge-sheet it is stated that the doctor while being chased fell near a tree. There is every possibility that he might have sustained these injuries of abrasions on account of such fall. It was well argued that even fall was on account of chasing which amounts to show of force arresting ingredients of hurt. The injury report under Ext. M-7 reveals that the attending physician had found few abrasions, contusions plus ache and pains all over the body. It may be noted that Dr. Rakshit was being chased and assaulted by a number of persons but surprisingly enough he did not sustain any serious injury which could have been taken note of it and this means that he received these injuries mostly on account of fists and slaps and also by fall on the ground. Definitely the injured doctor was not hospitalised and this means he was treated as out door patient. In the evidence of Dr. A. M. Yadav there is no suggestion that those injuries could have been manufactured. There is no suggestion in the evidence of Dr. Rakshit also that he got those injuries manufactured.

18. Dr. A. K. Rakshit has been examined as MW-1, during the course of domestic enquiry. He has given full account of the incident as to how he was badly abused and assaulted by the concerned workman and others. From his evidence it appears that there were several persons to see the occurrence including outdoor patients. No outdoor patient has been examined. However, non-examination of any outdoor patient will not make the story of simple assault improbable because there are several others mostly serving staff to state on oath about the occurrence. The injured doctor had no malice or grudge against the concerned workman and therefore he could have been no occasion for any false complication of the concerned workman.

19. From the cross-examination of Dr. Rakshit it appears that the concerned workman was examined by Dr. P. K. Das who had declared him medically unfit due to pain in his leg. The medical examination report of Jogeshwar Prasad the concerned workman forms part of the enquiry proceedings. The attending physician found him unfit for duty for 20-3-79 and 21-3-79. The report does not indicate that the concerned workman was unable to make any movement. However, at this stage the evidence of Dr. P. K. Das can be looked into. He had seen doctor Rakshit being chased by a crowd. He himself became panicky and took shelter in X-ray room and bolted the room from inside out of fear. Later on one Shri A. C. Saha also joined him. It is Mr. Saha who told him the name of the assailants including the concerned workman. But Shri Saha never stated in his own evidence that he had told the names of assailant to Dr. P. K. Das. That being the position that part of the statement of Dr. P. K. Das cannot be taken into consideration. In cross examination the witness refused to have seen anybody assaulting Dr. Rakshit. The evidence of this witness show that the concerned workman had approached him for grant of fitness certificate on 21-3-79 at 11.30 A.M. and that he had granted with certificate. I think this sort of report will be of no help to the concerned workman.

20. Shri A. C. Saha, X-ray Technician had seen the concerned workman assaulting Dr. Rakshit. One Chhanga Ram, Security guard had also seen part of the occurrence but he has not named the concerned workman as one of the assailants. He did not know the concerned workman. He did not see the concerned workman in the crowd. I think that sort of question was irrelevant when he did not know the concerned workman then how he could have noticed him in the crowd. MW-6 Mrs. Maclean is a Staff Nurse. He had also seen the part of the occurrence but she did not see the concerned workman in the crowd. The witness was re-examined by the presenting Officer, and she was disbelieved. I think there is no such procedure of disbelieving own witness in a domestic enquiry. The witness cannot be cross-examined by the prosecution in the enquiry stage.

21. Shri D. K. Kuttu is yet another witness examined on behalf of the management as MW-8. He has named Lusa Manihi, Mithulal Gope and Sarvanarayan Singh as assailant of Dr. Rakshit. He had seen Dr. Rakshit falling under a Kadam Tree and when he was trying to get up the con-

cerned workman lifted iron rod to assault the doctor. The witness has stated by him requested Shri Jogeshwar Pd. not to assault the doctor with iron rod. It is in his evidence that Jogeshwar Pd. dropped iron rod on his request and thereafter he did not see him any time or anywhere in the crowd. This sort of statement appears to have been a bit contradicted by Shri A. C. Saha X-ray Technician who states iron rod struck the branch of Kadam tree and then the concerned workman threw it on the ground. Be that as it may, both these witnesses are unanimous in their evidence that the concerned workman had lifted iron rod with the intention to cause injury to Dr. Rakshit.

22. Shri R. K. Singh, Security Guard had also seen the occurrence but he did not recognise anybody in the crowd. Shri A. N. Baburao, Stenographer, MW-4 was not an eye witness to the occurrence.

23. I find that as many as 9 witnesses were examined by the management including the injured doctor A. K. Rakshit but nobody except injured himself and Mr. Saha named Jogeshwar Prasad the concerned workman to have caused any injury to the doctor. Most of them denied to have recognised the concerned workman. Shri Kutty and Saha had also seen him lifting iron rod for assault on doctor. The evidence of Dr. Rakshit, Mr. Kutty and Saha read together will cover the misconduct as mentioned in the clause of the Certified Standing Orders as referred to above.

24. A short question for consideration may arise as to whether the concerned workman can be held guilty on the evidence of injured himself without any corroborating evidence and in the circumstances when a good number of persons were there to see the occurrence. Before accepting the evidence of Dr. Rakshit we are required to examine as to whether he had any malice or grudge against the concerned workman from before. Dr. Rakshit while deposing as witness stated that he had no grudge nor the concerned workman had ever shown any illwill or misbehaviour against him prior to the alleged incident. It is not always necessary that evidence must be corroborated. An order of built can be recorded even on the sole testimony of a witness and I find no reason to disbelieve the evidence of Dr. Rakshit save and except that he has given an exaggerated account of assault. Apart from that Shri Kutty and A. C. Saha had seen the concerned workman giving a kick to Shri Rakshit the CMO. In order to constitute assault it is not necessary that actual injury should be caused. It is enough if a show of force is used.

25. The learned counsel for the management submitted the assault on the superior officer is serious misconduct and order of dismissal was justified. However, the learned representative for the workmen urged that there was a criminal case also against the concerned workman for the same occurrence wherein he was honourably acquitted. Admittedly the enquiry proceeding ended much earlier than the judgement of acquittal in the criminal trial. It is now admitted position of the law that continuance of domestic enquiry pending criminal trial was not an illegality but normally in case of grave misconduct the management should have exercised restraint and wait for the decision of the criminal court. In the instant case the concerned workman was given benefit of doubt and was acquitted of the charges. The word 'Benefit of doubt' should not be read in its restricted sense. It has the same effect and force as in case of clean acquittal. It is true that enquiry does not require same standard of proof as is required in a criminal trial.

26. I have examined the materials available on the record brought during the course of domestic enquiry. Prima facie there was evidence to prove that the concerned workman was one of the members of the rioters and he committed assault on the person of Dr. Rakshit. The concerned workmen while making his own statement took alibi and stated that on the relevant date and time of occurrence he was at his brother's cycle shop at Raksha Copper Project. He stated that one Shri K. Prasad wanted to purchase a cycle and he had taken him to the shop of his brother for the purpose. However, the deal could not be finalised and the cycle was not purchased. He also stated that while returning home at about 11.00 A.M. he went to the hospital to get his fitness certificate. Shri K. Prasad has come to

support this story as VW-1. I think it was a good defence and the concerned workman was expected to have pleaded this fact while replying to the chargesheet. He had replied to the chargesheet but surprisingly enough he did not mention this fact that he was at his brother's cycle shop at Raksha Copper Project. Non mentioning of this fact in reply to the chargesheet will definitely lead to an inference that the story of alibi was an after thought and manufactured story. Besides this Shri K. Pd. was not examined in the criminal court as stated by him to state this story of alibi. So I am to hold that this defence has got no force at all and it cannot be believed.

27. Now coming to the question of punishment it was urged by the management that the misconduct was very grave and the punishment of dismissal should not be interfered with. It was also pointed out that the concerned workman was issued Office Memo twice—one in August, 1975 and other in April, 1976 for misconduct but no punishment was inflicted for he offered unqualified apology and that he was let off on warning. I have examined the submissions made from both the sides. In my view the punishment of dismissal which is the last punishment should be rarely inflicted and that too in rare cases. I think withholding of two increments permanently without any back wages will meet the end of justice. In the result the order of dismissal is set aside and the management is directed to reinstate the concerned workman to his original post within two months time from the publication of the Award. Two increments falling due will be withheld permanently but in the circumstances of the case there can be no order of back wages. But he will get the continuity of service.

This is my Award.

B. RAM, Presiding Officer

नई दिल्ली, 28 अप्रैल 1994

का.आ 1200 :—औद्योगिक विवाद अधिनियम, 1947 (1948 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, उसे दिनांक 26-4-94 को प्राप्त त्रावणकोर टिटै-नियम प्रोडक्ट्स लि. प्रबंधन के संबंध में उनके कर्मचारों के और नियोक्ताओं के बीच हुये औद्योगिक विवाद के संबंध में अनुबंध में यद्योक्त केन्द्रीय सरकार औद्योगिक अधिकरण कोलम के पंचाट को प्रकाशित करती है।

[सं. एल-29012/25/91-आई आर (विविध)]

बी.एम. डेविड, डेस्क अधिकारी

New Delhi, the 28th April, 1994

S.O. 1200.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kollam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Travancore Titanium Products Ltd and their workmen, which was received by the Central Government on 26-4-94.

[No. L-29012/25/91-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL,
KOLLAM

(Dated, this the 18th day of April, 1994)

PRESENT :

Sri C. N. Sasidharan, Industrial Tribunal.

IN

INDUSTRIAL DISPUTE NO. 45/91

BETWEEN

The Managing Director,
Travancore Titanium Products Ltd.,
Titanium P.O., Trivandrum.

(By Sri. G. Krishnan Nair, Advocate, Trivandrum)

AND

Shri D. Raghunathan Nair, Mani Bhavan, Pottayil,
Malayinkil, Trivandrum 695571.

(By Shri A. Lakshmana Iyer, Advocate, Trivandrum)

AWARD

The Government of India as per order No. L-29012/25/91-IR(Misc.) dated 22-10-1991 have referred this Industrial Dispute for adjudication to this Tribunal.

The issue for adjudication is the following :—

"Whether the action on the part of the management of Travancore Titanium Products Ltd., Trivandrum, in dismissing the services of Sri D. Raghunathan Nair as an Asst. Cook w.e.f. 16-3-1989 is legal and justifiable. If not, to what relief the workman is entitled?"

II. Sri. D. Raghunathan Nair was dismissed by the management company accepting the finding of the Enquiry Officer who after conducting a domestic enquiry found the workman guilty of the charges levelled against him. The management justifies their action in its written statement while Sri. Raghunathan Nair pleaded that he is innocent and claims reinstatement. According to him there has no proper and valid domestic enquiry.

III. The question regarding the validity of the domestic enquiry was tried by this Tribunal as a preliminary issue and by order dated 22-3-1994 it was held that the enquiry was properly conducted and the findings are valid. The rival contentions raised by the parties have been stated in that order which I am extracting below in full :—

ORDER

This reference concerns the dismissal of Sri. D. Raghunathan Nair, the workman in this case, from the service of the management Travancore Titanium Products Ltd., Trivandrum.

2. Before dismissal the workman was chargesheeted for absence from duty without sanction of leave for 95-1/2 days during the year 1987 as per charge memo dated 6-5-1988. The workman did not submit any explanation to the charge memo. However the management ordered a domestic enquiry and the Asst. Manager (legal) of the management company conducted a domestic enquiry in which the workman participated throughout. The enquiry officer found the workman guilty of the charge. The management accepted the findings of the enquiry officer and dismissed the workman from service. According to the management the enquiry was proper and valid. But according to the workman the management conducted only a farce of an enquiry and he is not guilty of the charge.

3. In the claim statement filed by the workman it is stated that while he was working in the management company he fell ill from 1976 onwards and as such he was not able to attend work regularly. According to him during 1987 he was absent for few days due to reasons beyond his control as well as physical sickness. But the management informed him that he was unauthorisedly absent for 95-1/2 days. He had submitted duly filled up leave application with medical certificate but the management without considering the said facts charge sheeted him. His absence was on medical ground. The management conducted a farce of an enquiry and the workman was not permitted to adduce evidence and not to cross examine the management witness. The enquiry

officer arbitrarily came to the conclusion that the workman is guilty of the charge and the management dismissed him. The enquiry officer violated the principles of natural justice and failed to appreciate the evidence and records in the right perspective. The management did not produce the records connected with the attendance of the workman and the alleged absence is due to improper maintenance of attendance and leave application register by the management. According to the workman the enquiry conducted against him is nothing but perverse. The enquiry officer did not explain to the workman the procedure in the enquiry and did not grant required opportunity to adduce defence evidence. The steps taken against him is discriminatory and biased. His further case is that he is the sole bread winner of the family and if he is thrown out of service he and his family would be put to untold misery and suffering.

4. The management in their reply statement has denied all the averments and allegations of the workman. The workman joined company's service as an Asst. Cook on 3-1-1974. He absented himself without leave for 95-1/2 days during 1987. As per the standing orders of the company habitual absence without leave is a misconduct. The workman was therefore issued a show cause notice as to why disciplinary action should not be taken against him. The workman did not show cause to the notice. Hence it was presumed that he has no satisfactory explanation. Hence an enquiry was ordered by the management. The workman has fully participated in the enquiry and in answer to the questions of the enquiry officer the workman replied that he has fully understood the allegations of misconduct levelled against him and also that he has committed the misconduct. The management has let in evidence in support of the charge. The workman did not adduce evidence. The enquiry officer on consideration of the evidence both oral and documentary found the workman guilty of the charge. The charge proved against the workman is a serious one warranting dismissal from service. The management has considered all previous disciplinary actions taken against the workman. The management took a lenient view to all provisions disciplinary actions taken against the workman. The management took a lenient view on all previous occasions but the workman never improved and continued the act of habitual absenting without leave. The workman was accordingly given notice proposing dismissal and in the absence of any response from him the dismissal was confirmed. The enquiry was conducted in strict compliance with the standing orders and also observing principles of natural justice. Sufficient opportunity was given to the workman to defend in the enquiry. In 1986 also the workman absented without leave. The workman has not produced any medical certificate before the enquiry office and no attempt has been made to prove the alleged certificate in the enquiry. Disciplinary action against the workman is a discretionary matter vested with the management. The management is not biased or prejudiced against any of its workman and there was no discrimination as alleged. According to the management the punishment of dismissal has been properly imposed and the workman is not entitled to any relief.

5. In view of the rival contentions regarding the validity of the enquiry that point was considered as a preliminary issue. The enquiry officer was examined as MW1 and the enquiry proceedings, statement of witness, charge sheet and documents in the enquiry have been marked as Ext. M1-series. Exts. M2 and M3 have also been marked on the side of the management. No evidence has been let in on the side of the workman.

6. The main point of attack against the domestic enquiry is that it was conducted in violation of the principle of natural justice and that the workman was not afforded sufficient opportunity. It is evident from Ext. M1-series that the workman fully participated in the enquiry. In the notice dated 10th August, 1988 issued to the workman from the management informing about the appointment of the enquiry officer the names of management witness is also stated. The workman was informed as per that letter to intimate the names of witness if any to the enquiry officer. Thereafter on 7th October, 1988 the workman appeared before enquiry officer. The enquiry officer enquired to the workman as to whether he understood the charge. The workman admitted that he has committed the charge. Thereafter the management wit-

ness was examined and the workman did not cross-examine the management witness. It is specifically recorded by the enquiry officer which is signed by the workman also. The workman was afforded opportunity to adduce evidence. But he did not adduce any evidence. It is thus clear from Ext. M-1 series that the enquiry was conducted after fully according opportunity to the delinquent to participate in the enquiry and to adduce evidence to defend his case. So the argument that the enquiry was conducted in violation of the principles of natural justice is devoid of merit.

7. The workman categorically admitted the charge levelled against him before the enquiry officer. Even then the enquiry officer examined the management witness. The management witness has deposed before the enquiry officer that the workman absented without leave for 95-1/2 days during the year 1987 which is supported by Ext. M3. Ext. M3 is a statement regarding details of the days of absence and the consequent loss of pay of the workman. This document was proved in the enquiry as Ext. M1. In that statement the number of days absented by the workman in each month is specifically stated. This document was not challenged by the workman in the enquiry. The evidence of management witness remains unchallenged in the enquiry. Though the workman submitted before the enquiry officer that he has produced medical certificate before the applicant regarding his absence no attempt has been made to prove those alleged certificate and to establish this contention. The enquiry officer considered the evidence of management both oral and documentary and came to the conclusion that the workman is guilty of the charge. The workman did not make any attempt to establish that he absented from duty on medical ground. In these circumstances I have no hesitation to hold that the charge against the workman has been proved in the enquiry by legal evidence. It cannot therefore be said that the findings of the enquiry officer are perverse as contended by the learned counsel for the workman.

8. The learned counsel for the workman has a contention that the management has not produced before the enquiry officer the time office register in which the leave applications are registered. Therefore according to the learned counsel the findings of the enquiry officer without perusing the relevant register is unjust and cannot be accepted. As I have said earlier the workman made no attempt in the enquiry to prove his contention that he has submitted necessary leave applications and medical certificates. The management was not called upon to produce the alleged Time Office register. On the other hand the management produced a loss of pay statement which has marked as Ext. M-1 enquiry. The enquiry officer as MW1 has stated that this statement is the extract taken from the Time Office register and the copy of this statement was given to the workman also and the workman did not raise any objection to the loss of pay statement. MW1 was not cross examined regarding this statement in the enquiry. MW1 has explained before this Tribunal that because of the above reasons the leave register was not verified. The enquiry officer considered the evidence of MW1 along with Ext. M3 loss of pay statement and also the admission of the workman regarding the charge and came to the conclusion that the workman is guilty of the charge levelled against him. Therefore this argument of the learned counsel for the workman is unsustainable.

9. In view of the above discussion, I hold that the domestic enquiry was conducted fully in compliance with principles of natural justice and the findings of the enquiry officer are proper and valid.

IV. The only question now remains for consideration is whether any interference is called for in the matter of punishment of dismissal. The workman has given evidence before this Tribunal as WW1 and marked Ext. W1 medical Certificate. He has deposed that he had absented from duty due to mental sickness that he had submitted medical certificate that he is the only bread winner of his family consisting of his mother, wife and 3 children and that the punishment of dismissal may be reconsidered. The learned counsel for the workman would contend that while considering the quantum of punishment the gravity of punishment is to be considered and also as to whether the workman requires justice in the matter of punishment. It is also argued that the trend of the decisions of apex court is humanising the punishment and in the case of the workman humanitarian consideration is necessary. On the other hand the learned counsel for the management would contend that the workman was found guilty of

the charge of unauthorised absence that the enquiry was found proper and valid by this court that Ext. W-1 medical certificate was not proved that the workman was given memo stating all the facts and the previous unauthorised absences of the workman that he did not submit any reply to that memo that even according to the workman he is a psychiatry patient that such a man is not fit to be reappointed and that the management has considered all the aspects as per clause 14(7) of the standing orders of the company before imposing the present punishment.

V. The workman was found to be guilty of the misconduct of unauthorised absence of 95-1/2 days during the year 1987 in a properly conducted domestic enquiry. The workman has deposed before this court that he was found guilty of the very same offence for 9 occasions during the period 1976 to 85 that the management has shown leniency towards him on several occasions. It is also admitted that the management has given him a memo stating all the facts and the previous history of the workman before imposing punishment. He has not even submitted a reply to that memo. It is true that he has produced Ext. W1 medical certificate showing that he was under treatment from July 1986. But Ext. W1 medical certificate was not properly proved by examining the Doctor. The details of the illness are not before this Tribunal. Ext. W1 is dated 14th January, 1992. There is no explanation for not producing the medical certificate before the enquiry officer. As I have stated in the order quoted above the workman has not made any attempt in the enquiry to prove that he had submitted medical certificate to the management and applied for leave. These circumstances make me doubt the genuineness of Ext. W1. Therefore Ext. W1 could not be acted upon. Even according to him he was a psychiatry patient and there is no evidence on record to show that he is fit to resume duty. It is not at all advisable to appoint a psychiatry patient as a cook in the company. The workman has been charge sheeted for the very same offence on 9 occasions earlier and the management has shown maximum leniency and given opportunities to the workman to improve. But that did not produce any result. In the last case he has absented 95-1/2 days unauthorisedly. On a consideration of the totality of circumstances, I am of opinion that the punishment of dismissal imposed by the management is proper and commensurate with the gravity of the misconduct. That being the case no interference is called for from this Tribunal.

VI. The learned counsel for the workman brought to the notice of this Tribunal 3 decisions of the Supreme Court in support of the argument that the present punishment required re-consideration and leniency. The first authority cited is the decision in Ramakanth Mishra V. State of U.P. (1982 Lab. I.C. 1790). That was a case in which a workman was dismissed for use of indiscreet language disclosing threatening posture. The Supreme Court held that though indiscreet, improper, abusive language may show lack of culture but mere use of such language on one occasion unconnected with any subsequent positive action and not proceeded by any blame worthy conduct during 14 years of service could not permit an extreme penalty of dismissal from service. The second authority cited is the decision of the Supreme Court in the case between Hindustan Machine Tools Limited Bangalore and Muhammed Usman and another (3/2) LLJ 386). In that case the powers of the Labour Court under section 11-A of the Industrial Dispute Act was mainly dealt with. The facts of the case are not stated in the decision. The next authority cited is the decision in Jaswant Singh V. Pepsu Roadways Transport Corporation (84 LIC 7). In that case a driver was dismissed from service for consuming alcohol while on duty. The Labour Court held that he was drunk but looking to the circumstances of the case punishment of dismissal was quashed and reinstatement was ordered denying back wages. The High Court confirmed the punishment of dismissal from service. The Supreme Court justified the direction of the Labour Court but also added the punishment barring of 3 increments taking a humanistic approach. In the above two cases (1982 Lab. I.C. 1790 and 1984 Lab. I.C. 7) (Supra) the workmen were charge sheeted for the first time. But in the case before me the workman was charge sheeted for the very same offence on 9 occasions earlier and the management has condoned his unauthorised absence on those occasions and given him opportunities to improve. But there was no improvement in his attitude. In the last occasion he has absented 95-1/2 days unauthorisedly and failed to prove in the enquiry that he was mentally sick. The facts and circumstances involved in the case before the Supreme Court mentioned above and the case before me have no comparison at all.

Further even according to the workman he was a psychiatry patient and there is no certificate of fitness showing that he is fit to be employed. It is also note worthy that he has not made any attempt to find out any other employment even according to him. In these circumstances the above decision of the apex court according to me will not come to the rescue of the workman.

VII. In the result an award is passed holding that the action on the part of Management of Travancore Titanium Products Ltd., in dismissing Sri. D. Reghunathan Nair from service with effect from 16th March, 1989 is legal and justifiable and therefore he is not entitled to any relief.

C. N. SASIDHARAN, Industrial Tribunal

APPENDIX

Witness examined on the side of the Management :

MW1—Sri M. Shihabudeen.

Documents marked on the side of the Management :

Ext. M1—Series. Charge sheet, enquiry proceedings, enquiry report, statement of witness, documents, dismissal order etc. issued to the workman.

Ext. M2—Certified copy of the order of this Tribunal in M.P. No. 2/89 dated 23rd October, 1990.

Ext. M3—Photostat copy of loss of pay statement of the workman for the period from 1st January, 1987 to 31st December, 1987.

Witness examined on the side of the workman :

WW1—Sri. D. Reghunathan Nair.

Document marked on the side of the workman :

Ext. W-1 Photostat copy of Medical Certificate in the name of Sri D. Reghunathan Nair dated 14th January, 1990.

नई दिल्ली, 28 अप्रैल, 1994

का. आ. 1201.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, उसे दिनांक 26/4/94 को प्राप्त यूरेनियम कार्पोरेशन आफ इंडिया लि. प्रबंधन के संबंध में उनके कर्मकारों और नियोजकों के बीच हुए औद्योगिक विवाद के संबंध में अनुबंध में यथोक्त केन्द्रीय सरकार औद्योगिक अधि-करण धनवाद के पंचाट को प्रकाशित करती है।

[सं. एल-29012/34/87-डी. III (वी)]
बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 28th April, 1994

S.O. 1201.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Uranium Corporation of India Ltd. and their workmen, which was received by the Central Government on 26-4-94.

[No. L-29012/34/87-D.III(B)]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. Ram, Presiding Officer.

In the matter of an industrial disputes under Section 10(1) (d) of the I. D. Act, 1947.

PARTIES :

REFERENCE NO. 45 OF 1988

Employers in relation to the management of M/s. Uranium Corporation of India Ltd. and their workmen. (Ministry's Order No. L-29012/32/87-D.III(D), dated 12th March, 1988).

REFERENCE NO. 46 OF 1988

Employers in relation to the management of M/s. Uranium Corporation of India Ltd. and their workmen. (Ministry Order No. L-29012/31/87-D.III(D) dt. 12th March, 1988).

REFERENCE NO. 47 OF 1988

Employers in relation to the management of M/s. Uranium Corporation of India Ltd. and their workmen. (Ministry's Order No. L-29012/34/87-D.III(D) dt. 12th March, 1988).

REFERENCE NO. 49 OF 1988

Employers in relation to the management of M/s. Uranium Corporation of India Ltd. and their workmen. (Ministry's Order No. L-29012/34/87-D. III(D) dated 12th March, 1988).

APPEARANCES.

On behalf of the workmen : Shri S. Bose, Vice President, I.N.M.W.F.

On behalf of the employers : Shri P. R. Rakshit, Advocate.

STATE : Bihar.

INDUSTRY : Uranium.

Dated, Dhanbad, the 18th April, 1994

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Orders referred to above.

SCHEDULE OF REFERENCE NO. 45 OF 1988

"Whether the management of U.C.I.L., Jaduguda is justified in dismissing Shri Lusa Manjhi Miner T. No. 1401 from service w.e.f. 11-8-79 vide their order No. UCIL/PE/1401/Admin/Mines/79 dated 11-8-79 if not to what relief the workman is entitled?"

SCHEDULE OF REFERENCE NO. 46 OF 1988

"Whether the management of U.C.I.L., Jaduguda is justified in dismissing Shri Domon Manjhi, Miner T. No. 1086 from service w.e.f. 11-8-79 vide their Order No. UCIL/PE/1086/Admin/Mines/70 dt. 11-8-79? If not, to what relief the workman is entitled?"

SCHEDULE OF REFERENCE NO. 47 OF 1988

"Whether the management of U.C.I.L., Jaduguda is justified in dismissing Shri Charan Manjhi, Helper-C T. No. 1402 from service w.e.f. 11-8-79 vide their Order No. UCIL/PE/1402/Admin/Mines/79 dt. 11-8-79? If not, to what relief the workman is entitled?"

SCHEDULE OF REFERENCE NO. 49 OF 1988

"Whether the management of U.C.I.L., Jaduguda is justified in dismissing Shri Ram Prasad Halder, Driver, Tken No. 740 from service with effect from 11-8-79 vide their Order No. UCIL/PE/740/Admin/Mines/79 dt. 11-8-79? If not, to what relief the workman is entitled?"

2. All the four references have been heard together and have been disposed off by a common award. In all the four cases the fairness and propriety of the domestic enquiry has been conceded by the learned representative of the union. In other words its fairness has been held to be just and proper. In all the cases the chargesheets were issued to be concerned workmen on 15-7-1977 and they were all put under suspension. On the same date. The enquiry officer and the company's representative were the same in all cases. The enquiry proceedings were taken up together at old Administrative Building Jaduguda, Bihar. The proceedings were taken up on 1-8-77 and that ended on 6-6-78. However, in case of Shri Lusa Manjhi, the enquiry report was submitted on 27-4-79 but in other cases it was submitted on 21-4-1979.

3. In all the cases the action of the management in dismissing the concerned workmen from their services have been challenged.

4. The concerned workmen filed separate W.S. but the grounds taken by them are all common. Admittedly they were the employees of UCIL working at Jaduguda Mines in different capacities. They were issued chargesheets in the year 1977 and steps taken by the management was done by the Managing Director and thus the process of disciplinary action was initiated. Since the appellate authority became the persons involved in the primary stage of the disciplinary proceeding the concerned workmen lost their right of putting grievances against improper enquiry.

5. The concerned workmen were also taken to the Court of law by the management but it failed to prove the charges. Thus it was stated that the dismissal was unjustified and the concerned workmen prayed for their reinstatement with full back wages.

6. The management also filed separate W. S. in all the four cases. Some legal preliminary objections common to all four cases were taken. It was stated that the Tribunal has got no jurisdiction to adjudicate over the matter in as much as the activities performed by the management corporation is not profit oriented and as such it will not come under the ambit and scope of Section 2(j) of the I. D. Act.

7. It was also contended that the delinquent workmen never registered any demand against their dismissal nor it was rejected by the management and hence the references were incompetent and void abinitio.

REFERENCE NO. 45 OF 1988

8. In the instant reference Shri Lusa Manjhi, a miner was dismissed from service on 11-8-79 on various acts of misconducts committed by him within the mines premises. It is stated that on 25-6-77 he unauthorisedly entered into the mines premises and insisted on Sri A. S. Venkatachar, Dy. Supdt. (Mines) at about 7.10 A.M. to allow him to join his duty when Sri Venkatachar was allocating the jobs at the place of allocation. Shri Venkatachar asked Shri Lusa Manjhi to go down and wait at his office till allocation work is over. But Shri Manjhi became very violent without any provocation and assaulted Shri Venkatachar by holding his shirt collar. He also took an iron rod from one Shri Mithulal Gope and wanted to hit Shri Venkatachar but he was prevented by Shri S. Roy. Shri Roy snatched the rod from Shri Manjhi. It is stated that the concerned workman Shri Manjhi became very furious and assaulted Shri S. Roy, Supdt. (Mines).

9. Shri Manjhi did not stop there rather he brought a live snake and started terrorising Shri J. L. Bhasin, Addl. Supdt. of Mines and another officer. Shri Manjhi visited various departments in drunken state with live snake and held out threat of dire consequences to the officers. Shri Manjhi also incited other workers to gherao officers and supervisors in the Mines.

10. Round about 1 P.M. on the same day Shri Manjhi entered into the meeting room (shaft house) where the Managing Director was have a talk with the union representative. Shri Manjhi threatened the officers present in the meeting room to give a quick decision of his reinstatement forthwith. He also forced the Managing Director and other officers to go to the terrace of shaft house and forced them to read out the order and whereby the management had to agree to take him back to services from 25-6-77 itself. In this way the gherao and strike continued till 7 P.M. on 25-6-77.

11. It was commonly stated that in all four cases Lusa Manjhi and others were criminally prosecuted by the State of Bihar for their involvement in criminal cases which was registered as G.R. Case No. 321/77 which was pending trial before the Judicial Magistrate at Jamshedpur for more than 5 years. The Govt. of Bihar took a decision directing withdrawal of such criminal cases pending for disposal for a period exceeding five years provided the punishment of such offence involved would not exceed more than 5 years had there been conviction of the accused persons after trial. It was stated that withdrawal of the criminal cases by the order dt. 19-5-86 had nothing to do with the trial and this will not amount to clean acquittal for the accused persons never found any trial. On these grounds it was stated that the concerned workmen have got no case and the reference be answered in favour of the management.

12. The charges framed against the concerned workmen were as follows :—

"Acts of misconduct;

CSO No. 42(b).

Abetting, instigating, conducting or participating in or acting in furtherance of such strike or inciting others to strike.

CSO No. 42(p)

Threatening, intimidating, assaulting an employee of the company.

CSO No. 42(h).

Conduct on the part of the employee which endangers the life or safety of other employees."

CSO No. 42(i)

Riotous or disorderly or indecent behaviour within the premises of the company or the establishment.

CSO No. 42(bb)

Commission of any act subversive of discipline or good behaviour on the premises of the Company or the establishment."

13. The concerned workman had replied to the chargesheet which is Ext. M-8. In reply the concerned workman simply stated that the allegation levelled against him were false and motivated and that he was advised notice disclose his defence. At this stage when the matter was subjudice before the Criminal Court the concerned workman prayed that the proceeding be kept in abeyance till the disposal of the criminal case.

14. However, the management proceeded with the enquiry and examined a number of witnesses to prove the charges against the concerned workman. Before dealing with the merit of this case I would like to meet with some preliminary objections raised in all the four cases.

15. It is stated that the management corporation was not an 'Industry' within the meaning of Section 2(j) of the I. D. Act. In this connection the most remarkable and memorable judgement of Bangalore Water Supply and Sewerage Board etc.-vers-A. Rajappa and others, as reported in LLJ 1978 at page 349 can be relied upon wherein their Lordships of the Hon'ble Supreme Court held that organisation having fulfilled triple tests cannot be exempted from the scope of Section 2(j) of the I. D. Act. The UCIL has got systematic operation and it is run on account of active cooperation between the management and the workmen. Again the production of Uranium is made to satisfy the human wants and wishes. It was urged that uranium is not sold in the market and it is meant for nuclear power generation and other research activities. However, the Hon'ble Court has held that profit making or gainful objective is quite irrelevant and so I am to hold that it is an 'Industry'.

16. It is stated that the concerned workmen never raised their grievance before the management after they were dismissed from the service and therefore the reference was premature and incompetent. It was contended by the learned representative of the workman that the order of dismissal in all the four cases were passed by the Chairman-cum-Managing Director and in that view of the matter the concerned workmen were not left with any scope to go for redressal of their grievance. However, the learned counsel for the management submitted that the concerned workmen should have gone to the Board of Directors. I think the contention raised by and on behalf of the workmen on this point should be sustained. On these ground the reference cannot be branded as premature and incompetent.

17. Shri S. Venkatachar is one of the victims who suffered at the hands of the concerned workman. He was knowing the concerned workman Lusa Manjhi for the last 10 years. He was also very much sympathetic to the concerned workman. It is in his evidence that only a day before the occurrence, i.e. on 24-6-77 the concerned workmen met with him and told that he had lost his job. Shri Venkatachar apprised him of the fact that he was absent without any notice so he has already lost his lien of his appointment with effect from 23-6-77. Shri Manjhi told that he had sent intimation of his sickness through his co-worker Shri Bhutnath. Shri Bhutnath also told Shri Venkatachar that he had left the application of Shri Manjhi on his table in his absence. However, Shri Venkatachar denied to have seen any application on his table. After that Shri Venkatachar advised Shri Manjhi to put in another application stating the facts that he had already sent an application through Bhutnath which could not reach to the authority in time and then his absence may be condoned and he be taken back to service. Shri Manjhi agreed to file application but he did not.

18. Shri Venkatachar has narrated the incident as to how Manjhi came to him on 25-6-77 when he was allocating duty. He had brought joining report and medical certificate and insisted upon Shri Venkatachar to sign the joining report. Shri Venkatachar tried to reason with the concerned workmen but he did not listen and he prevented Shri Venkata-

char from allocating duty to the employees. Shri Venkatachar stated that Shri Manjhi was very inaggressive mood which he had never seen before. It is in his evidence that Shri Manjhi caught hold of him by shirt collar and man handled him. Shri Manjhi also assaulted Shri S. Roy who tried to intervene into the matter. The witness also stated that he was given several blows by Shri Mithulal Gope. I find that the name of Mithulal Gope appeared very prominently in all the four references but he is not the concerned workman before this Tribunal.

19. The witness stated that the concerned workman appeared at the scene with a live snake and started terrorising everybody as a result whereof utter chaos and confusion prevailed which continued till 7.45 P.M. when Shri M. K. Batra, Managing Director arrived at the scene. It is in his evidence that they all went to the meeting hall to discuss the matter. But again at about 4.40 P.M. there were a great commotion at the shaft house for a great crowd of workers were seen rushing in the meeting hall. In cross-examination the witness stated that he did not see any iron rod in the hands of Shri Lusa Manjhi on 25-6-77. It is the case of the management that the concerned workman wanted to assault Shri Venkatachar with iron rod but Shri Venkatachar himself has denied this fact.

20. MW-2 Shri A. R. Mitra also claimed to be present at the place of occurrence but his evidence will disclose that he did not recognise as to who assaulted whom. He did not name the assailant of Shri Ray and Shri Venkatachar. Of course he had seen a live snake into the hands of Shri Manjhi who was trying to create panic and was intimidating the persons around.

21. Shri S. Roy was examined as MW-3. He heard from Shri Char that he was man-handled by the concerned workman. He also stated that the concerned workman was seen rushing towards Shri Venkatachar for assault but he himself came in between and was assaulted by the concerned workman. He stated to have seen the concerned workman rushing with an iron rod but this fact has been denied by Shri Venkatachar himself. The witness stated that the concerned workman was holding a live snake and was seen terrorising the officers around. The witness saw the concerned workman giving ultimatum to the union leaders that the matters be decided within two hours. He was also seen asking Shri Batra, Managing Director to go to terrace and read out the order. The officers were forced by the concerned workman to go to the terrace and read out the agreement.

22. During cross-examination of this witness a short question for consideration arose as to whether Shri Manjhi was an employee of the Corporation when the occurrence took place. Admittedly Shri Manjhi had lost his lien of appointment only a few days before the occurrence. However, the witness clarified the position and stated that on the alleged date of occurrence the concerned workman had already been taken back in service at about 2 P.M. on 25-6-77 and therefore he was a fullfledged employee of the Corporation.

23. MW-4 Shri S. B. Srivastava, Dy. Supdt. (Mines) had seen Lusa Manjhi assaulting Shri S. Roy with fists and snake. He had also seen the concerned workman holding a live snake. MW-5 Shri R. D. Tewary, Foreman (Mines) and MW-7 did not see any assault but they had seen the concerned workman with a live snake terrorising the people with the same. MW-6 and MW-8 did not see any assault. They did not identify Lusa Manjhi and so their statement that Shri Manjhi was holding live snake cannot be accepted.

24. MW-9 Shri M. K. T. Bhasyn, Foreman (Mines) did not see any assault but saw Lusa Manjhi holding a live snake and talking with Shri Ray and Shri Venkatachar at the top of his voice. The witness also stated that no work can be done due to gherao and abnormal situation.

25. MW-10 Shri M. C. Sadasivan, Foreman (Mines) saw the concerned workman assaulting Shri S. Roy, the Mines manneer. He wanted to save Mr. Roy and in the process he sustained injury in his stomach by Lusa Manjhi. MW-11 had seen the concerned workman with live snake. He did not see any assault. This witness and few others stated that the concerned workman was under the influence of liquor but there is no positive evidence to support this fact for the concerned workman was not medically examined. The evidence of MW-12 is of no use for he learnt everything from

others. He also learnt the name of Lusa Manjhi who was having a snake around his neck.

26. MW-13 Shri S. K. Mandal is Security Inspector. He had appeared at the scene. On being informed and he saw the concerned workman with a live snake and threatening officials and inciting other workers for strike. He saw the concerned workman and others throwing their hats and belts on the officials.

27. MW-14 is a Time Keeper. He stated that no worker of B Shift went underground till 8 P.M. on 25-6-77. This means the entire work was disrupted on account of striking employees. MW-15 is not a witness on the point of occurrence. MW-16 is Sri V. S. Saluja, Dy. Supdt. (Mines) Mechanical. He had seen the concerned workman hitting Mr. Sri Rao and also shouting 'Maro, Maro'. MW-17 is Medical Officer who examined injuries on the person of Shri Venkatachar, S. Roy, Managing Director and others. MW-18 is not a witness of the occurrence.

28. From the evidence of these witnesses it is well proved that Shri Lusa Manjhi the concerned workman committed assault on the person of Shri Venkatachar and Shri S. Roy. It is also proved that he was having a live snake and was seen terrorising officers holding out threat to take a decision in his favour. In this connection we can have a look to the statement of the concerned workman himself. He by his own statement admitted that he was carrying a live snake with him. He was also present at the terrace on the morning of 25-6-77 at the time of allocating of A shift duty and had a conversation with Shri Venkatachar regarding his joining duty. It is also clear from his evidence that on account of some delay in taking decision the workers got agitated and this ultimately resulted in stoppage of work. He admitted that he forcibly entered the meeting room where the negotiations are going on between the management and the union leaders. He had told the union leaders and officer to take a decision regarding his reinstatement. He had also asked the Managing Director to go to the terrace for reading the reinstatement order. All these facts taken together simply go to prove that the concerned workman committed misconduct as alleged in the chargesheet.

29. I have carefully gone through the evidence of these witnesses and nothing has been illucidated from their cross-examination to disbelieve their testimony. I find that there are several witnesses to see the occurrence who stated to have seen the concerned workman assaulting the officials. They had also seen Shri Manjhi with live snake and terrorising the officials and holding out threats. He being a member of unlawful assembly he was found inciting the workers for strike. For these reasons I am to hold that there were materials to substantiate the charges levelled against the concerned workman and the enquiry officer had rightly held him guilty of the charges and submitted report accordingly.

REFERENCE NO. 46 OF 1938

30. Shri Domon Hansda is the concerned workman who is a Miner having T. No. 1086. He was also dismissed from the services with effect from 11-8-79. The case of the concerned workman had already been stated while dealing with the case of Shri Lusa Manjhi. The management submitted a written report stating about the primary legal objections which have already been answered with reference to the case of Lusa Manjhi.

31. He was stated to have committed various grave misconduct on 25-6-77 for which he was issued chargesheet by the competent authority. It is stated that he was on duty in B shift commencing from 3 P.M. on 25-6-77. He did not go to work place rather he joined in strike and gheraoed the officers and reported for duty at 8 P.M. on that day. He was stated to have forcibly entered the room of Shri Venkatachar and Shri S. B. Srivastava at 4.45 P.M. He was also stated to have assaulted Shri Venkatachar on his chest with glass paper weight. He was also stated to have been shouting 'Maro, Maro' all the times. He had replied to the chargesheet which were found quite unsatisfactory giving use to the domestic enquiry. He was found guilty and ultimately dismissed.

32. The management examined 8 witnesses to prove the charges against the concerned workman. Shri S. B. Srivastava is MW-1. He is Dy. Supdt. Mines. He stated that round about 4.45 P.M. about 10 to 15 workmen rushed into his chamber. Those workmen were very much agitated and in serious mood. He identified Shri Domon Hansda in the group. He also saw Shri Domon Hansda assaulting Shri Venkatachar.

Shri D. Bhatnagar tried to protect Shri Venkatachar. In the meantime the concerned workman moved towards the witness and tried to pull him out by holding his left hand. He knew the concerned workman from before for he was working in his section.

33. MW-2 is Shri S. Venkatachar. He supported the evidence of MW-1 by stating that Domon Hansda and several others forcibly entered into his chamber. He also stated that he sustained injuries at the hands of Shri Hansda, the concerned workman. MW-3 is not an eye witness to the occurrence. MW-4 had seen somebody throwing paper weight at Shri Char but he did not see as to who had thrown it. Later on he came to know that the paper weight was thrown by Shri Domon Hansda. I think this part of the statement cannot go against the concerned workman, for it was a hearsay statement.

34. MW 5 had seen a huge crowd near a shaft house. He did not see as to who assaulted whom. He appears to be a hearsay witness on so many points. MW-6 is Shri Rakshit, Medical Officer who had examined injuries on the persons of Shri Venkatachar and others. MW-7 is a Canteen Supervisor. He is not a witness on the point of occurrence. Of course in his cross examination he had stated that from the morning there was a gherao in the mines shaft and he had heard that people were not going underground for one Lusa Manjhi's reinstatement. MW 8 is also a witness who did not see the actual occurrence.

35. Shri Domon Hansda has been examined himself as DW-1. He denied to have committed any offence but he admitted his presence on 25-6-77 on 'B' shift. DW-2 supported the statement of Domon Hansda. According to him Domon Hansda did not participate in the occurrence.

36. I have examined the evidence of these witnesses and I find that some responsible officials having no grudge and malice against Shri Hansda have stated that he assaulted Shri Venkatachar on his person. I find no cogent reason to disbelieve the evidence of these witnesses. I find that the management has been able to bring home the charges and prove the misconduct against the concerned workman.

REFERENCE NO. 47 OF 1988

37. Shri Charan Manjhi, Helper (C) is the concerned workman, who according to the management was on duty in B shift on 25-6-77 and he was present at the shaft house without reporting for duty. He was stated to have joined gherao and was also seen instigating other workers to join the strike. On the same day round about 4.30 P.M. he assaulted Shri M. Bhattacharjee with helmet.

38. The case of the concerned has already been stated in Ref. No. 45/88.

39. The management examined witnesses to prove the misconduct during the course of enquiry. Shri S. Roy is the Mines Manager/Mines Supdt. and he is the only witness who had seen the concerned workman hitting Shri Bhattacharjee with helmet. He saw the occurrence with his own eyes and there is nothing in his cross-examination to disbelieve his credence.

40. MW-2 is not witness on the point of occurrence. He simply stated that the concerned workman did not go underground for work. MW-4 also stated the same facts. MW-3 is the doctor who had examined injuries on the person of Shri Bhattacharjee.

41. Shri Bhattacharya, MW-5 himself did not see his assailant and subsequently he could learn that he was hit with helmet by Shri Charan Manjhi. However, he did not remember as to who had told him that he was hit by Charan Manjhi. In this way the evidence of the injured himself is not very much helpful so far the allegations against Shri Charan Manjhi is concerned. MW-6 Shri S. K. Mondal had seen the concerned workman with abnormal movement using abusive language towards high officials of the Corporation.

42. The concerned workman while making his own statement denied to have assaulted anybody. However, he admitted that he did not go for duty as other workers also were not going for duty. In this way I find that Shri S. Roy is the only witness who had seen the concerned workman hitting Shri Bhattacharya with helmet. Shri Mondal had seen him using abusive language. I find no reason to disbelieve all these witnesses and so I am to hold that the misconduct against the concerned workman have already been proved.

REFERENCE NO. 49 OF 1988

43. Shri R. P. Halder is the concerned workman in this reference. He stated to have arrived at the place where the duty of the workers was being allocated. He did not go for duty and started inciting labourers not to go to the place of duty. He also took leading part in organising gherao. He saw Lusa Manjhi assaulting Shri Roy. It is also stated that Shri S. B. Srivastava, Dy. Supdt. Mines rushed to save Shri Roy but in the meanwhile he was assaulted by Shri Halder, the concerned workman in terrace itself at about 7.15 A.M. on 25-6-1977.

44. The case of the concerned workman has already been stated in Ref. No. 45/88.

45. The concerned workman was issued chargesheet for the misconduct committed by him under various clauses of certified standing orders, which reads as follows :—

CSO No. 42(b)

"Striking work in contravention of the provisions of these standing orders or any extant statute, law, rule or enactment of the Govt. of India or abetting, instigating, conducting or participating in or acting in furtherance of such strike or inciting others to strike."

CSO No. 42(p)

"Threatening, intimidating assaulting an employee of the company."

CSO No. 42(h)

"Conduct on the part of the employees which endangers the life or safety of the other employees."

CSO No. 42(i)

"Riotous or disorderly or indecent behaviour within the premises of the company or the establishment."

CSO No. 42(bb)

"Commission of any act subversive of discipline or good behaviour on the premises of the Company or the establishment."

46. While submitting reply to the chargesheet the concerned workman did not disclose his defence on the ground that a criminal case was pending against him for the same occurrence. He requested the management for stay of the departmental proceeding till the conclusion of the criminal trial. I find that the management proceeded with the enquiry and examined a number of witnesses to prove the charges.

47. Shri Venkatachar, Dy. Supdt. Mines had seen the concerned workman assaulting Shri Srivastava. In cross-examination he clarified that the assault on him and Srivastava took place almost at the same time. He has stood the test of cross-examination. Shri S. B. Srivastava stated that he was trying to save Shri Roy from the assault being committed by Lusa Manjhi when Ram Prasad Halder, the concerned workman came out of the crowd and assaulted him with fists and slaps. This witness also seemed to have stood the test of cross-examination.

48. MW-3 Shri S. C. Sinha is a hearsay witness so far the concerned workman was concerned. He had seen the assault on the person of Sri Venkatachar, but he did not recognise the assailant. He learnt the name of the concerned workman from others. MW-4 had seen the concerned workman with a M.S. Rod and he was in furious mood. Actually he did not see the assault being committed upon the person of Sri Srivastava. MW-5 had seen the concerned workman in furious mood. He also learnt from others that Sri Srivastava was assaulted by the concerned workman. Similarly MW-6 also did not see assault on the person of Srivastava by Shri Halder. On this point he is a hearsay witness.

49. MW-7 did not see the assault with his own eyes but he saw the concerned workman being taken away by the officials. They were also trying to pacify the concerned workman. MW-8 is supervisor in time section. He did not see as to who assaulted Srivastava but he testified that the concerned workman did not go underground for work. MW-10 also did not see the assailant of Srivastava. He could learn the name of the concerned workman from others. In this way I find that the management examined a number of witnesses in each reference who were quite useless for most of them did not support the manner of assault. Even then I find that there are witnesses to tell about the occurrence and nothing has been elucidated to disbelieve their credence. MW-9 is the Doctor who examined injuries on the person of Shri Srivastava.

50. The concerned workman did not make any statement. He also refused to adduce any witness. I find that Sri Srivastava stated about the assault committed on his person by the concerned workman which were fully corroborated by Venkatachar. I here is no other witness who could have really seen the assault being committed by Shri Halder, the concerned workman. I am to hold that the concerned workman was guilty of rioting and assault on the person of Shri S. B. Srivastava which was not only disorderly and indecent rather subversive of discipline and good behaviour.

51. I have discussed the evidence available with the record which were sufficient to hold the concerned workmen guilty of misconduct as alleged in their chargesheet. Admittedly they have all been dismissed on proved charges. At this stage the question arises as to whether the punishment of dismissal was disproportionate to the misconduct committed by them? The learned counsel for the management while referring a number of decisions of the Hon'ble High Court contended that the assault on the person of high officials by the employees is the highest order of indiscipline and if such things are allowed to go unabated it will be very difficult for the management to go with the work and maintain peace and production. Reliance was placed upon the authority reported in 1992 (65) F. L. R. at page 443 and 1987 Lab I. C. at 416. Placing reliance upon the authorities it was contended that specially in case of Lusa Manjhi (Ref. No. 45[88]) the concerned workman proved himself to be a terror in the premises of the company while playing with a snake and terrorising the officials holding out threats to concede to his demands. Not only that he also caused injury to the officer of the rank of Supdt. of Mines.

52. No doubt using abusive language terrorising, threatening and assault are all major and serious misconduct and punishment of dismissal may not be called unjustified but in the instant reference the workmen involved are mostly Tribals. The tribals are illiterate and very ignorant residing in remote corner of the village. They little know about the consequences of any wrong being committed by them. About Lusa Manjhi it is stated that he had never shown such intemperate and repulsive behaviour any time before, the occurrence which took place on 25-7-77. He was having a snake around his neck. From the evidence it also transpires that he was persuaded/guided by his colleagues to go inside the meeting hall with the snake and press for his demand. It appears that he acted and behaved as ill advised by his co-workers. It appears that he was taking all these steps little knowing the consequences of his deeds. Considering the status and the poor condition of these Tribals it will be in the interest of the justice that certain lapses on their part have to be condoned. After having considered these aspect of the matter I think a bit sympathetic view of the matter can be taken and the punishment of dismissal can be altered to some other punishment. Accordingly all the concerned workmen after having been found guilty of the misconduct are hereby censured and the necessary entries to that effect be made in their service books. In case of Lusa Manjhi his two consecutive future increments be permanently withheld. In case of others only one increment is withheld permanently. In the circumstances of the case they are also not entitled for any back wages. The management corporation is thus directed to reinstate the concerned workmen within three months time from the date of publication of the Award under the conditions aforesaid. However, the continuity of service will be maintained.

B. RAM, Presiding Officer

नई दिल्ली, 29 अप्रैल, 1994

का. आ. 1202.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, उसे दिनांक 27-4-94 को प्राप्त घनश्याम पटेल एवं कं. प्रबंधन के संबंध में उनके कर्मकारों और नियोक्ताओं के बीच हुए औद्योगिक विवाद के संबंध में अनुबंध में यथोक्त केन्द्रीय सरकार औद्योगिक अधिकरण बम्बई-1 के पंचाट को प्रकाशित करती है।

[मं. एन-31012/14/92-आई आर (विविध.)]

बी. एम. डेविड, डेस्क अधिकारी

1114 GI/94-7.

New Delhi, the 29th April, 1994

S.O. 1202.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Ghanshyam Patel & Co. and their workmen, which was received by the Central Government on 27-4-94.

[No. L-31012/14/92-IR(Misc)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, BOMBAY

PRESENT :

Shri Justice R. G. Sindhakar, Presiding Officer.

Reference No. CGIT-33 of 1993

PARTIES:

Employer in relation to the management of M/s. Ghanshyam Patel & Co.

AND

Their Workmen.

APPEARANCES:—

For the Management—Shri Purav, Advocate.

For the Workmen—No appearance.

INDUSTRY : Port & Docks STATE : Maharashtra.
Bombay, dated the 10th day of March, 1994

AWARD

The Government of India, Ministry of Labour, New Delhi by letter dated 12-7-1993, made the following reference to this Tribunal for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947.

"Whether the action of the employer of M/s. Ghanshyam Patel & Co., clearing and forwarding agent operating at Bombay Port in terminating the services of Shri Namdev B. Barne, ex customs and docks clerk with effect from 1-7-1991 is just, legal and proper? If not, what relief this workman is entitled to?"

2. Notice of this reference was sent to the workman, and it appears that he has been served with the notice directing him to appear before this Tribunal on 20-10-1993. However, thereafter a fresh notice was issued to him cancelling the hearing of 20-10-1993, and adjourning the matter to 23-11-1993, in view of the fact that the Presiding Officer of this Tribunal was not available on 20-10-1993. This notice however, has been returned undelivered by the Postal Authorities.

3. On behalf of the management, it is submitted that there has been a settlement in the matter, after the failure report was made by the Conciliation Officer and before the above reference was made to this Tribunal. As a result of the settlement, Mr. Namdev B. Barne, the workman concerned has accepted the payment. An affidavit has been filed by Shri Ghanshyam Patel, on behalf of the employer, stating that there has been a settlement arrived at between the parties to the dispute, and the Payments have been made to the workman Shri Namdev B. Barne. This submission made on behalf of the employer was duly supported by the receipt passed on by Shri Namdev Barne. I do not think it is necessary to adjourn the hearing of this reference and keep it pending in view of the above circumstances. Therefore, the award is drawn in terms of the settlement dated 7-3-1994 (marked Exhibit—'A')

R. G. SINDHAKAR, Presiding Officer.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, BOMBAY

Reference No. CGIT-1/33 of 1993

M/s. Ghanashyam Patel & Co.

AND

Their Workmen

AFFIDAVIT OF SHRI G. K. PATEL.

I, Ghanshyam K. Patel, aged 61 years, residing at Bombay, do hereby state on solemn affirmation as under:

1. I am the Proprietor of Ghanshyam Patel & Company. I am conversant with the facts and circumstances of the above Reference. I am making this affidavit for the purpose of hearing and disposing the above reference ex-parte.

2. I say that the Central Government has by its Order dated 12-7-1993, referred the dispute regarding termination of services of Shri Namdev B. Barne for adjudication to the Hon'ble Tribunal. I say that prior to the said Order, Conciliation proceedings were held by the Conciliation Officer and Asst. Labour Commissioner (Central)—I, Bombay and the said Conciliation Officer had submitted his failure report dated 6/21-5-1992 to the Government of India. I say that after the submission of the said report but before the issuance of the Order of Reference dated 12-7-1993, a Settlement was reached between the Company and Shri Namdev B. Barne, and accordingly Memorandum of Understanding dated 30-3-1993 was signed between the parties. I say that the said Memorandum of Understanding in original is annexed hereto and marked as Annexure 'A'.

ANNEXURE 'A'

I say that as per the said Memorandum of Understanding, payments were made to Shri Barne in full and final Settlement. I say that the original receipt passed by Shri Barne is annexed hereto and marked as Annexure-'B'.

ANNEXURE 'B'

3. I say that the Secretary to the Government of India was informed about the aforesaid Memorandum of Understanding by a Joint letter dated Nil submitted by the Company and Shri Barne and as the matter was amicably settled, he was requested not to take further action on the failure report of the Asst. Commissioner (Central)—I. I say that a copy of the said joint letter is annexed as Annexure 'C' to the Company's statement dated 3-9-1993 filed before the Hon'ble Tribunal. I say that in view of the said Memorandum of Understanding and the payments made pursuant thereto Shri Barne, the entire dispute has been amicably settled and Shri Barne does not have any right and/or claim whatsoever against the Company. I pray that the Hon'ble Tribunal may be pleased to dispose of the above matter as having been bilaterally settled between the parties as per the Memorandum of Understanding dated 30-3-1993 and hence not surviving for adjudication.

4. I pray that in the abovesaid circumstances this Hon'ble Tribunal may be pleased to pass an Order disposing the above Reference as not surviving for adjudication.

I say that the contents of the above paras are true to my knowledge.

Solemnly affirmed at Bombay
this 7th day of March, 1994.

Before me

S. N. SATPUTE, Notary G. R. Bombay,
235, P. D'MELLO ROAD,
Near G.P.O.

BOMBAY-400 001.

7 MAR 1994

ANNEXURE 'A'

MEMORANDUM OF UNDERSTANDING AT BIPARTITE LEVEL REACHED BETWEEN THE MANAGEMENT OF M/S. GHANSHYAM PATEL & CO. BOMBAY, AND THEIR WORKMAN NAMELY SHRI NAMDEV B. BARNE EX-EMPLOYEE OF THE COMPANY OVER HIS FINAL SETTLEMENT OF DUES

1. Whereas Shri Namdev B. Barne who was working as a Custom Clerk with the management of M/s. Ghanshyam Patel & Co., Clearing, Forwarding & Warehousing Agents, Bombay has raised an industrial dispute before the Assistant Labour Commissioner (Central), Bombay under Section 2A of the Industrial Dispute Act, 1947 over the issue of his alleged illegal termination of service by M/s. Ghanshyam Patel & Co., Bombay vide letter dated 12-7-1991.

2. Whereas the Assistant Labour Commissioner (Central)—I, Bombay after making due investigation and holding conciliation proceedings submitted his Failure of Conciliation Report to the Secretary, Government of India, Ministry of Labour, New Delhi vide his letter No. B.ALC(C)-I/8(88)/91 dated 6/21-5-92 since there was no meeting ground and the parties held divergent views.

3. And whereas Shri Namdev B. Barne, ex-employee of the Company approached the management of M/s. Ghanshyam Patel & Co., Bombay expressing his desire to agree to have bilateral discussions with a view to resolve the dispute amicably at bilateral level.

4. And whereas after holding series of bilateral discussions on 14th Jan., 28th Jan., 3rd Mar., 18th March and finally on 30th March, 1993 when the views by both the parties expressed and appreciated in better perspective in order to resolve the dispute.

5. And whereas finally on 30-3-1993 both the parties agreed to resolve the dispute on the following terms of settlement.

TERMS OF SETTLEMENT

Taking into consideration the period of service rendered by the employee Shri Namdev B. Barne in M/s. Ghanshyam Patel & Co., Bombay from 1-8-1987 to 30-6-1991 and subsequently his service were terminated by the management w.e.f. 1-7-1991 and in order to resolve the dispute amicably after having bilateral discussions as indicated above the management agreed to finally settle the dispute by arranging the following payments to the employee concerned Shri Namdev B. Barne which has been agreed to and acceptable to Shri Namdev B. Barne.

(i) The management shall pay salary to Shri Namdev B. Barne for his idle period from 1-7-1991 to 31-3-1993 to the extent of Rs. 39,452.20 as per details of calculation shown in the attached statement annexed as 'A'.

(ii) The management shall pay the amount of Bonus to Shri Namdev B. Barne for the following accounting year; as per the details given as under:

a) Accounting year 1990-91—Rs.	3748.00
„ „ 1991-92—	4247.00
„ „ 1992-93—	4876.50

Total : Rs. 12871.50

(iii) The management shall pay gratuity to Shri Namdev B. Barne for the period of his initial date of appointment i.e. from 1-8-1987 till 31-3-1993 (for 5 years and 8 months) as per the provisions of the Payment of Gratuity Act, 1972 taking into consideration the last salary drawn by the employee which comes to Rs. 6,755.00.

(iv) The management shall make arrangement to see that the final settlement of Provident Fund dues are paid to Shri Namdev B. Barne after complying with the formalities within reasonable times say within 3 months.

(v) The management shall pay the reimbursement of medical expenses already incurred by Shri Namdev B. Barne for medical treatment of his wife to the extent of Rs. 8,000 as a gesture of goodwill.

(vi) Shri Namdev B. Barne shall surrender the Customs Pass issued by the Company while he was in service immediately at the time of receiving the above payments.

(vii) Shri Namdev B. Barne shall not have any right and claim whatsoever against M/s. Ghanshyam Patel & Co., Bombay after receiving the above final settlement payments and he shall not file any case before any forum in regard to his service matters after receiving the above final settlement dues.

(viii) The management of M/s. Ghanshyam Patel & Co. shall pay the above final settlement payments as agreed to Shri Namdev B. Barne on 30-3-1993.

A copy of this settlement shall be submitted to all the concerned authorities duly signed by M/s. Ghanshyam Patel & Co., and Shri Namdev B. Barne making clear request for treating the dispute in regard to his service matter is finally settled and be treated as closed.

Parties to the settlement

On Behalf of the Management

Sd/-

Shri Ghanshyam K. Patel

On behalf of the Management :

Sd/-

Shri Namdev B. Barne

Signature of Witnesses:

Sd/-

(1) Shri Naresh J. Engineer,
Accountant, M/s. Ghanshyam Patel & Co.,
Bombay.

Sd/-

(2) Shri D. A. Mendon,
Custom Clerk, M/s. Ghanshyam Patel & Co.,
Bombay.

Place : BOMBAY

Date : 30th March, 1993.

A/C SHRI NAMDEO B. BARNE

ANNEXURE-A

Salary

(1) Period : 1-7-91 To 31-3-92 :—

	From	P.F.	E.P.F.	P. Tax	L.W.F.	Total Ded.	Net
July '91	1900-50	153	20	30	2	205	1695-50
Aug '91	1900-50	153	20	30	..	203	1697-50
Sept '91	1900-50	153	20	30	..	203	1697-50
Oct '91	84-00 } 1900-50 }	160	21	30	..	211	1773-50
Nov '91	84-00 } 1900-50 }	160	21	30	..	211	1773-50
Dec '91	84-00 } 1900-50 }	160	21	30	2	213	1771-50
Jan '92	84-00 } 1900-50 }	160	21	30	..	211	1773-50
Feb '92	84-00 } 1900-50 }	160	21	30	..	211	1773-50
Mar '92	84-00 } 1900-50 }	160	21	30	..	211	1773-50
	17608-00	1419	186	270	4	1879	15729-50

Period : 1-4-92 to 31-3-93 :—

	From	P.F.	E.P.F.	P. Tax	L.W.F.	Total Ded.	Net
April '92	2,166-10	176	23	30	..	229	1,937-10
May '92	2,166-10	176	23	30	..	229	1,937-10
June '92	2,166-10	176	23	30	2	231	1,935-10
July '92	2,166-10	176	23	30	..	229	1,937-10
Aug '92	2,166-10	176	23	30	..	229	1,737-10
Sept '92	2,166-10	176	23	30	..	229	1,937-10
Oct '92	2,255-35	184	24	30	..	238	2,017-35
Nov '92	2,255-35	184	24	30	..	238	2,017-35
Dec. '92	2,255-35	184	24	30	2	240	2,015-35
Jan '93	2,255-35	184	24	30	..	238	2,017-35
Feb '93	2,255-35	184	24	30	..	238	2,017-35
Mar '93	2,255-35	184	24	30	..	238	2,017-35
	26,528-70	2160	282	360	4	2806	23,122-70
						Total	Rs, 39452-20

For Ghanshyam Patel & Co.
'Partner

ANNEXURE

RECEIPT

I, Namdev B. Barne, Ex-employee of M/s. Ghanshyam Patel & Co., Bombay residing at Ramchandra Mhatre Chawl,

Airgao, Dombvli (E), Distt. Thane hereby acknowledge the receipt of following payments from M/s. Ghanshyam Patel &

Co., Bombay against full and final settlement of all my claims :—				
Cheque No.	583455	dt. 30-3-93	for	Rs. 39,452.20
" "	583456	dt. 30-3-93	for	12,871.50
" "	583457	dt. 30-3-93	for	6,755.00
" "	583459	dt. 30-3-93	for	8,000.00

All the above cheques are drawn on State Bank of India, Backbay Reclamation Branch, Bombay-21.

(NAMDEV B. BARNE)

नई दिल्ली, 29 अप्रैल, 1994

क्र. भा. 1203.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, उसे दिनांक 27-4-94 को प्राप्त रोबिन्सन स्टीवडोर प्रबंधन के संबंध में उनके कर्मचारों और नियोक्ताओं के बीच हुए औद्योगिक विवाद के संबंध में अनुबंध में यथोक्त केन्द्रीय सरकार औद्योगिक अधिकरण बम्बई-1 के पंचाट को प्रकाशित करती है।

[सं. एल-31011/9/91—ग्राई ग्रार (मिस.)]
बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 29th April, 1994

S.O. 1203.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Robinson Stevedore and their workmen, which was received by the Central Government on 27-4-94.

[No. L-31011/9/91-IR(Misc.)]
B. M. DAVID, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, BOMBAY

REFERENCE NO. CGIT-1/66 OF 1991

Employers in relation to the Management of M/s. Robinsons, Bombay.

And

Their workmen.

May it please your Honour :

In the above reference both the parties have arrived at the following settlement :

TERMS OF SETTLEMENT

- (1) It is hereby agreed that the management of M/s. Robinsons, Bombay, will increase the wages of the one Tandel and 3 barge khalasis by Rs. 100 per month in full and final settlement of their claim in the above reference.
- (2) It is further agreed that the management had agreed to pay the increase in the wages with retrospective effect from 1-1-1990.
- (3) It is also agreed that the management will pay the arrears of increase in the wages on or before 31-3-1994 to all the 3 barge khalasis and one Tandel.

In view of the above settlement, it is prayed that the above reference may be disposed off in terms of the above settlement.

Bombay,
Dated : 30-3-1994.

Sd/-

L. S. Vajirani for
M/s. Robinsons, Bombay.

Sd/-

Advocate,
M. B. Anchan,

For National Dock Workers' Union,
Bombay.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, BOMBAY

PRESENT :

Shri Justice R. G. Sindhakar, Presiding Officer.

REFERENCE NO. CGIT-66 OF 1991

PARTIES :

Employers in relation to the management of M/s Robinson Stevedore,

AND

Their Workmen.

APPEARANCES :

For the Management—Shri Vazrani.

For the Workmen—Shri Anchan, Advocate.

INDUSTRY : Port and Docks STATE : Maharashtra

Bombay, dated 10th day of March, 1994

AWARD

This is a reference made by the Government of India, Ministry of Labour, New Delhi, by letter dated 6-8-1991, for adjudication of the following reference under Section 10(1)(d) of the Industrial Disputes Act, 1947.

"Whether the management of M/s. Robinson Stevedore & Shipping Agents—operating in Major Port of Bombay, justified in denying the benefits of wage Settlement on 12-6-1989 to their Barge/Launch workmen—holding that they were not either Port & Dock workers of Registered Workers of Dock Labour Board—when they were extended the same Wage Settlement benefits earlier. If not, what relief are the workmen entitled to?"

2. Statement of claim has been filed on behalf of the workmen, raising several contentions therein, and written statement thereto has also been filed on behalf of the management. However, it is not necessary to deal with them in view of the latest development.

3. Today (10-3-1994) when the matter came up before me for hearing, the parties to the dispute have produced a settlement dated 10-3-1994. Mr. M. B. Anchan Advocate on behalf of the National Dock Workers' Union, and Mr. L. S. Vazrani, on behalf of M/s. Robinson Stevedore and Shipping Agents, have appended their signatures to the said settlement.

4. As a result of the settlement reached, it is seen that the management has agreed to increase the wages of one Tandel and 3 Barge Khalasis by Rs. 100 per month in full and final settlement of the claim in the above reference. It is further agreed by the management to pay the above increase with retrospective effect from 1-1-1990, and it is also agreed by the management that arrears of increase in wages shall be paid on or before 31-3-1994, to all the Barge Khalasis, and one Tandel.

5. In view of the above settlement arrived at between the parties to the dispute, no industrial dispute now survives which could be or needs to be adjudicated upon.

6. I find that the terms and conditions of the said settlement are fair and in the interest of both the parties. In view of this, award is passed in terms of the settlement, which is marked Exhibit—'A'.

7. Award accordingly.

R. G. SINDHAKAR, Presiding Officer

नई दिल्ली, 29 अप्रैल, 1994

का. भा. 1204.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल ट्रांसपोर्ट कं., बम्बई के प्रबंधकों के संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बम्बई-1 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/4/94 को प्राप्त हुआ था।

[सं. एल-31012/38/90-आईआर (विविध)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 29th April, 1994

S.O. 1204.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bombay-1, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of National Transport Co. and their workmen, which was received by the Central Government on 27-4-1994.

[No. L-31012/38/90-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, BOMBAY

PRESENT :

Shri Justice R. G. Sindhakar, Presiding Officer.

REFERENCE NO. CGIT-33 OF 1991

PARTIES :

Employers in relation to the management of M/s. National Transport Co., Bombay.

And

Their Workmen.

APPEARANCES :

For the Management—Shri Purav, Advocate.

For the Workmen—Shri Wagh, Advocate.

STATE : Maharashtra.

INDUSTRY : Transport.

Bombay, dated the 10th day of March, 1994

AWARD

By letter dated 2/4-11-1990, the Ministry of Labour, Government of India has under Section 10(1)(d) of the Industrial Disputes Act, referred the following dispute to this Tribunal for adjudication.

"Whether the action of M/s. National Transport Co., Bombay in superannuating Shri Chandrakant G. Wilankar, Head Clerk with effect from 14-4-1990 while allowing the other 3 workmen namely S/Shri Dasrath Bandol, H.P. Maniar and Sanjiva Saliyan to continue in service even after attaining the age of superannuation i.e. 62 years is justified. If not, to what relief the workman is entitled?"

2. Statement of claim has been filed on behalf of the workman by the Transport and Dock Workers' Union. It is submitted that, the management by letter dated 9-3-1990, informed Shri Wilankar, hereinafter referred to as the workman, that as per the agreement reached between the union and the management, he will retire with effect from 14-4-1990. This is pursuant to a settlement arrived at between parties in the conciliation proceedings under Section 12(3) of the Industrial Disputes Act, 1947 (hereinafter re-

ferred to as the Act). Clause 1(a), of the said settlement reads that, any workman who reached the age of 62 shall retire from the services of the employer. Accordingly the workman Shri Wilankar was due for retirement on 14-4-1990. Further, clause 1.b of the said settlement stipulated that no employee superannuated or medically unfit shall be employed or re-employed in the services of the company. Three other workmen who have already attained the age of 62 and/or above, are still continued in the services. The management has designated these 3 workmen as managers, though they do perform the same duties that they had been doing before. The union's submission therefore, is that these three workmen are not managers as defined in the law-lexicon of Shri Venkitaramaia.

3. The union further contended that it requested the management to continue Shri Wilankar in service, however, the management did not accede to the request of the union, and in the conciliation proceedings also, no negotiations could take place. The submission therefore of the union is, that the terms of the settlement have been violated by continuing these three employees in service and retiring one workman, and this amounted to unfair labour practice in view of the termination of the services of Shri Wilankar with effect from 14-4-1990. It is further stated that he is unemployed since termination of his services, and prayer for an award in his favour was ultimately made.

4. Resisting the contentions made in the statement of claim, written statement has been filed contending that Shri Wilankar's services were not terminated, whereas, by virtue of the settlement dated 26-5-1985, reached between the Company and the union before the Regional Labour Commissioner (Central), no workman can be continued in service after the attainment of 62 years of age. It is further contended that since Shri Wilankar has already been superannuated from the services of the Company, he is no more a workman within the meaning of section 2(k) of the Industrial Disputes Act, 1947. It is also contended on behalf of the management, that, there is no unfair labour practice so far as the superannuation of Shri Wilankar is concerned, and therefore, the said grievance made by him cannot be entertained.

5. It is further, contended that the three other workmen, whose cases are referred to here have already been promoted as managers in the managerial cadre, and therefore, they ceased to be workmen under the provisions of the Industrial Disputes Act, 1947. Their cases were not similar and identical to that of Shri Wilankar. The management also denied that the clauses 1.a and 1.b of the said settlement are applicable to S/Shri Bandal, Maniar and Saliyan.

6. I have heard the learned counsel appearing on either side. On behalf of the Company, it was urged that a settlement has been reached between the Company and the union, and it is prescribed in the settlement that ;

"The notices issued for superannuation with effect from 15-7-1985 on S/Shri Mayokar, Saliyan and Anchan are treated as withdrawn by the employer and the workmen shall continue to be in employment upto 31-1-1988 on the same job as they were doing hitherto. Also the workmen who may reach the age of 62 years before the 31st of January 1988 shall be continued in employment till that date. It is further, agreed that with effect from 1-2-1988, and thereafter, any workman who reached the age of superannuation at 62 years shall retire from the service of the employer."

7. It is not disputed that Shri Wilankar is governed by the provisions of the said settlement. It is also an admitted position, that, Shri Wilankar retired after 1-2-1988, on reaching the age of 62 years, that is, on 14-4-1990. Therefore, in my view, the notice dated 9-3-1990, issued by the Company superannuating Shri Wilankar from the services with effect from 14-4-1990 cannot be called unjust or illegal

8. Reference has been made to clause 1.b of the settlement, which is to the following effect.

"No superannuated or medically unfit workmen shall be employed or re-employed from any source."

9. The grievance therefore, is that, the three other workmen have been continued even after the attainment of the age of 62 years. I do not find any substance in the

submission made on behalf of the workman, in as much as the other three employees who have been continued in service do not belong to the category of workmen covered by the settlement, and therefore, that being the position, no grievance can be made on behalf of the workman, if they have been continued in service. In the circumstances, I find that the action of the management is not found to be unjust and illegal, unfair or discriminatory, in superannuating Shri Wilankar from the services of the Company with effect from 14-4-1990. In the circumstances, Shri Wilankar will not be entitled to any relief under this reference.

10. Award accordingly, with no order as to costs.

R. G. SINDHAKAR, Presiding Officer

नई दिल्ली, 3 मई, 1994

का. आ. 1205.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कार्यकारी अभियन्ता, रेलवे इलेक्ट्रिफिकेशन, कोटा के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-4-94 को प्राप्त हुआ था।

[संख्या एल—41012/3/87-डी-II(बी)/आई आर/बी आई]

एस. एस. के. राव, डेस्क अधिकारी

New Delhi, the 3rd May, 1994

S.O. 1205.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Executive Engineer Electrification, Kota and their workmen, which was received by the Central Government on the 19-4-94.

[No. L-41012/3/87-D.II(B)/IRL-B.I]

S.S.K. RAO, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA : PRESIDING OFFICER : CENTRAL GOVT. INDUSTRIAL TRIBUNAL NEW DELHI

I.D. No. 135/88

In the matter of dispute between :

Shri Chinkey Lal
through Divisional Secretary,
Paschim Railway Karamchari Parishad Bhimganj, Mandi,
Kota Junction.

Versus

Executive Engineer I,
Railway Electrification, Kota.

Appearances : Shri A.D. Grover for the workman.

Shri V.K. Sharma for the management.

AWARD

The present reference was received on transfer from the Presiding Officer Industrial Tribunal, Jaipur Ministry of Labour Government of India vide order No. L. 41012/3/87-D.II(B) dated 17-11-1988 for adjudication :

"Whether the action on the part of the management of Executive Engineer (II) Railway Electrification Kota,

in terminating the service of Shri Chinkai Lal, Casual Labour with effect from 22-6-86 is justified ? If not to what relief the workman is entitled for ?"

2. The workmen in the statement of claim alleged that he was engaged as casual labour by the Bridge Inspector Railway Electrification Kota on 8-12-83 and as granted scale rate on completion of the requisite services. He became entitled to the temporary status from 1-1-86 as per railway board letter dated 1-6-84. This crucial date was subsequently amended to be effective from 1-1-84 vide Railway Board's letter dated 11-9-86 with all consequential benefits. The workmen was also entitled for regular scale of pay from the date of his initial engagement as per judgment of the Hon'ble Supreme Court on principle of equal pay for equal work.

3. The Management instead of granting temporary status to the applicant workman terminated his services w.e.f. 22-6-86 vide letter dated 26-6-86 although the applicant was not under the control of the management as the Executive Engineer (I) of the Railway Electrification Kota issued letter dated 26-6-86 under the signatures of Executive Engineer (II) which was not valid.

4. The principles of natural justice have not been complied with in terminating the services of the applicant so much so that the explanation of the applicant on the show cause notice was neither accepted by the Bridge Inspector nor forwarded to the Competent Authority. No reasonable opportunity was afforded to the applicant who had put in more than 3-1/2 years service and as such the provisions of section 25 F of the I.D. Act were not complied with. Not only this even the provisions of section 25-G and H of the I.D. Act have not been followed. The applicant was said to have resigned vide application dated 17-6-86 but the said application was submitted under duress and coercion. This was not accepted by the competent authority until now as otherwise the show cause notice dated 20-6-86 ought not have been issued at a subsequent date. The matter of illegal retrenchment was taken up as an industrial dispute. The matter was dealt with in conciliation proceedings but no conciliation could arrive at. The action of the management was thus illegal and the termination was against all norms of natural justice and he deserves to be reinstated with full back wages and continuity of service.

5. The management in its written statement alleged that the workman was engaged as daily rated casual khalasi by Bridge Inspector Railway Electrification on 8-12-82 and not 8-12-83 and was given scale rate w.e.f. 7-6-83 as per the rules of administration in force at that time. He did not become eligible for grant of temporary status because he did not fulfil the guidelines and conditions precedent to the grant of temporary status as contained in Administration letter dated 31-3-86 and 20-2-87. The claim of the workman for regular scale of pay on the date he was engaged as casual labour was totally outside the scope of reference. The services of the workman were not terminated w.e.f. 22-6-86 vide Order dated 26-6-86 or from any other date or by any order. On the contrary the applicant left the job of his own accord and did not turn up for duty after 20-6-86. Notice was sent to the workman on 20-6-86 but the same was returned unserved and also the notice dated 28-6-86. He was not entitled to any wages as claimed by him and the action of the management was fully justified as the workman himself left job of his own accord and there was neither any termination nor retrenchment.

6. The management in support of its evidence examined Hari Kishan Kaushal MW1 and Shri D.N. Sharma MW2. The workman himself filed affidavit what did not appear for cross-examination inspite of opportunity afforded to him.

7. I have heard, the representatives for the parties and have gone through the record.

8. The representative for the management has urged that no order of termination was passed by the management and no such order as alleged by the workman in the statement of claim has been produced. The workman had absented himself from duty and as such did not turn up from 20-6-86. He had rather given a writing dated 17-6-86 whereby he resigned his services, and he stated therein that he would not join his duties on and from 20-6-86. The workman thus have left the job of his own accord and there was no termination or retrenchment of his services by the management. The question that he was entitled to temporary status do not arise in these proceedings because the reference has been made regarding his termination and not regarding his grant of temporary status. The workman has not come into the witness box to contradict the sworn testimony of two witnesses of the management as such there was no reason to disbelieve their statements made on oath.

9. The workman representative on the other hand has urged that the management has not been able to justify its action of terminating the services because there was no reason brought on record by the management regarding the workman's leaving the job of his own accord. He has urged that the latter dated 18-6-86 whereby the workman is alleged to have resigned was got written under duress. It appears that the date of receipt as 3-6-86 if it had been given on 17-6-86 it should have been received on that very day. It was, therefore, a case of termination and the same was not justified.

10. After having gone through the points urged before me and the record of this case, I am of the view that the workman in his statement of claim has alleged his termination vide order No. CR/RP/W/115/8 dated 26-6-86. Neither the copy of such order was produced by the workman nor summoned from the management and as such there was no such order on this file.

The management in its written statement had denied issuance of any such order. The letter photo copy of which has been filed by the management dated 17-6-86 has been admitted by the workman representative in court and has signed the same as admitted. Whether the document was got executed under any coercion or duress was a matter of evidence but no evidence has been produced by the workman in this case. In his affidavit filed in the court. The workman alleged that he was threatened by the Bridge Inspector to tender his resignation on 17-6-86 which he gave. Nothing has come on record to show that this letter was got written under duress or any kind of pressure from the workman. The workman filed affidavit for his evidence on 7-8-1990. He did not appear in the court until 20-11-91 and by that time 8 opportunities had already been granted to him and his representative had undertaken to produce him in the court and had stated that in case of his failure to produce him his evidence may be treated as closed. Since the workman has not appeared into the witness box his affidavit cannot be accepted unless he was subjected to cross examination by the other party. There is as such no evidence on behalf of the workman in this case. On the contrary two witnesses of the management have appeared and submitted on oath and the workman representative has not been able to show any order or letter vide which his services were terminated though so specifically given the number and date of the said order in the statement of claim. Keeping in view all the circumstances, I am of the opinion that the workman had himself abandoned the job and there was nothing on record to suggest that any pressure or coercion of any kind was exercised on the workman for procuring his signatures on letter dated

11-6-87. The action of the management in this case was justified and nothing appear on record to suggest any illegality committed by the management in its action. Keeping in view all the circumstances that the workman was poor person. I leave the parties to bear their own costs.

March 9th, 1994.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 3 मई, 1994

का. आ. 1206.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हाइड्रो क्षेत्रीय ग्रामीण बैंक, कोटा के प्रबंध-तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, एवं श्रम न्यायालय, कोटा के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-4-94 को प्राप्त हुआ था।

[संख्या एल-12012/126/92-आई. आर. (बी-3)/बी-1]

एस. एस. के. राव, डेस्क अधिकारी
New Delhi, the 3rd May, 1994

S.O. 1206.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal & Labour Court, Kota as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Harauti Kshetriya Gramicena Bank, Kota and their workmen which was received by the Central Government on the 22-4-94.

[No. 12012/126/92-IR(B. III)/B.1.]
S.S.K. ROY, Desk Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा/राज./
निर्देश प्रकरण क्रमांक: ओ. न्या (केन्द्रीय)-6/1992
दिनांक स्थापित : 14/12/92

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली की आदेश,
संख्या एल-12012/126/92-आई. आर. (बी-3)
दिनांक 9/12/92

औद्योगिक विवाद अधिनियम, 1947

मध्य

महासचिव, हाइड्रो क्षेत्रीय ग्रामीण बैंक एम्पलाईज एसो-
सियेशन, 88, इन्दिरा मार्केट, ब्रजराजपुरा, कोटा।

—प्रार्थी यूनियन

एवं

अध्यक्ष, हाइड्रो क्षेत्रीय ग्रामीण बैंक, 9 ए बी मालावाड़
रोड, कोटा।

—प्रतिपक्षी नियोजक

उपस्थित

श्री जगदीश नारायण शर्मा,
आर. एच. जे. एस.

प्रार्थी यूनियन की ओर से प्रतिनिधि:—श्री एन. के. तिवारी
प्रतिपक्षी नियोजक की ओर से प्रतिनिधि : श्री एम. सी. गुप्ता
अधिनिर्णय दिनांक : 30 मार्च, 1994

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा निम्न निर्देश औद्योगिक विवाद अधिनियम, 1947 की धारा 10(1) (घ) व उपधारा (2-क) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :—

“Whether the action of the management of Hadoti Kshetriya Gramin Bank, Kota in terminating the services of Shri Kanwar Lal Bairwa part-time Messenger, w.e.f. 15-9-91 is legal and justified? If not, to what relief the workman is entitled to and from what date?”

2. निर्देश न्यायाधिकरण में प्राप्त होने पर दर्ज रजिस्टर किया गया व पक्षकारों को सूचना जारी की गयी तदुपरान्त दोनों पक्षों की ओर से अपनी-अपनी उपस्थिति दी गयी तथा श्रमिक पक्ष की ओर से अपना क्लेम प्रस्तुत किया गया।

3. आज प्रकरण में दोनों पक्षों के प्रतिनिधियों उपस्थित हुए। श्रमिक प्रतिनिधि ने प्रकट किया कि वे इस मामले को अब आगे नहीं चलाना चाहते हैं और विवाद रहित अधिनिर्णय पारित किए जाने का निवेदन करते हैं। पत्रावली के अवलोकन से भी यह प्रकट होता है कि स्वयं श्रमिक कंवरलाल द्वारा दि. 18/12/93 को प्रार्थना-पत्र प्रस्तुत कर यह प्रकट किया गया कि वह इस विवाद को नहीं चलाना चाहता है। अतः इन समस्त परिस्थितियों में इस प्रकरण में “विवाद रहित अधिनिर्णय” पारित किया जाता है।

इस अधिनिर्णय को भारत सरकार, श्रम मंत्रालय, नई दिल्ली को नियमानुसार प्रकाशनार्थ भिजवाया जाये।

जगदीश नारायण शर्मा, न्यायाधीश

नई दिल्ली, 3 मई, 1994

का. आ. 1207.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इण्डिया के प्रबन्धतंत्र के संवद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19 अप्रैल, 1994 को प्राप्त हुआ था।

[संख्या एल-12012/156/89-आई आर/(बी III)/वी I)]
एस. एस. के. राव, डेस्क अधिकारी

New Delhi, the 3rd May, 1994

S.O. 1207. -In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 19-4-94.

[No. L-12012/156/89-I.R. (B.(III)/B.I.)
S.S.K. RAO, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, CHANDIGARH.

Case No. I.D. 145/89

Ashok Kumar Vs. State Bank of India

For the Workman : Shri J.G. Verma

For the management : Shri A.C. Jaidka

AWARD

Central Govt. vide Gazette notification No. L-12012/156/89-I.R.(B-3) dated 7th September 1989 issued U/S10(1)(d) of the Industrial Disputes Act 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the State Bank of India represented through the Regional Manager Sri Nagar in terminating the services of Shri Ashok Kumar son of Dhani Ram, Water Boy in Purani Mandi Branch of the Bank and not giving an opportunity for re-employment as required U/S 25-H of the I.D. Act is justified? If not, to what relief the Workman is entitled to?”

2. Mr. A.C. Jaidka appearing on behalf of the management has made a statement that Ashok Kumar, petitioner has been given fresh appointment and he does not want to persue with the present reference. He has also placed on the record application of the petitioner which is mark ‘A’. J.G. Verma representative of the petitioner has also made statement that in view of the statement made by Mr. A.C. Jaidka and the letter mark ‘A’ no dispute award be returned to the Ministry.

In view of the statement of the respective parties and the letter of the petitioner Ashok Kumar wherein he has also sought for withdrawal of this reference a no dispute award is returned to the Ministry.

Chandigarh ARVIND KUMAR, Presiding Officer
24-3-1994

नई दिल्ली, 3 मई, 1994

का. आ. 1208.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) धारा 17 के अनुसरण में, केन्द्रीय सरकार श्री बैंकटेश्वर ग्रामीण बैंक के प्रबन्धतंत्र के संवद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-4-94 को प्राप्त हुआ था।

[संख्या एल-12012/36/89-आई आर (बी I)]
एम. एस. के. राव, डेस्क अधिकारी

New Delhi, the 3rd May, 1994

S.O. 1208.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (1 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sri Venkateswara Gramseena Bank and their workmen, which was received by the Central Government on the 18-4-94.

[No. L-12012/36/89-IR(B.I.)]
S.S.K. Rao, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

Present : Sri Y. Venkatchalam, M.A., B.L., Industrial Tribunal-I.

Dated : 28th day of March, 1994.

Industrial Dispute No. 68 of 1989

Between

The Workmen of Sri Venkateswara Gramseena Bank. —Petitioner.

And

The Management of Sri Venkateswara Gramseena Bank. —Respondent.

Appearances :

M/s. K.G. Kannabiran & B. Nalin Kumar, Advocates for the Petitioner.

M/s. K. Srinivasa Murthy & G. Sudha, Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-12012/36/89-IR(B)-I, dt. 27-9-1989 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the management of Sri Venkateswara Gramseena Bank, Chittoor and their Workmen to this Tribunal for adjudication:

“Whether the action of the management of Sri Venkateswara Gramseena Bank, Chittoor in terminating the services of Sri B. Srinivasulu, ex-worker from 1-10-87 is justified? If not, to what relief the workmen concerned is entitled?

This reference was registered as Industrial Dispute No. 68 of 1989 and notices were issued to both the parties.

2. The brief facts of the claim statement read as follows:

It is submitted that Mr. B. Srinivasulu was appointed as a Sweeper-cum-Messenger in the Respondent Bank on 8-12-1983. After he worked for about 4 years continuously without any break or interruption, his services were terminated with effect from 1-10-1987 without any enquiry or prior notice, in utter violation of the provisions of the I.D. Act. It is submitted that the workman completed about 4 years of services and no enquiry was instituted against him and he was not involved in any misconduct. It is further submitted that the services of the Workman were arbitrarily and illegally terminated on 1-10-1987 without any prior notice as required under Section 25-F of the I.D. Act. It is also submitted that there is no valid grounds/reasons for terminating his services and the management, having illegally terminated the services of the workman, recruited others for the same work. Hence it is prayed that this Hon'ble Tribunal may be pleased to set aside the action of the Respondent in terminating the services of the workman as illegal and answer the above

1114 GI/94—8

reference in favour of the Workman and consequently direct his reinstatement with full back wages and continuity of service and all other ancillary and attendant benefits in the interest of justice.

3. The brief facts of the counter filed by the Respondent Bank read as follows :

The workman in dispute Sri B. Srinivasulu was engaged purely as temporary part time Sweeper-cum-Messenger on daily wage basis. The Petitioner is a temporary part time daily wage sweeper-cum-messenger and he cannot claim rights on par with the permanent employees and he has no legal right to raise a dispute. No part time temporary employee can make a demand for a permanent post. As per the instructions given by the Government of India and as per the exigencies of the work, temporary daily wage part time sweeper-cum-messengers are taken to discharge their duties. There is a regular recruitment procedure and the management cannot give a go-bye to the procedure prescribed by NABARD and Government of India apart from Employment Compulsory Notification Act. The petitioner was engaged purely as a part-time temporary daily wage sweeper in the Eguva Veedhi Branch of this Respondent Bank. In the enquiry upon the complaints of forgery and spurious loans particularly in Integrated Rural Development Programme loans indented for poor, belonging to the lower strata of the society, the staff detected certain cases of forgery etc. and Officers of this Bank were enquired into the matter and an important confessional letter given by a loanee on 9-9-87 regarding the forgery committee, and the letter was entrusted to the petitioner on the same day to be handed over in the Branch. The petitioner deliberately and intentionally in a planned manner reported the loss of important letter on 10-9-87 with village-wise Advance Register, positively with a view to help the person involved as the letter will prove his complicity in the bank. The loss of the important letter was inquired into and the petitioner was given an opportunity to explain, after he was briefed and shown of the material available with the Bank which are against him, the petitioner gave a written explanation on 26-9-1987 after perusing the material against him and after considering and analysing the material available with the Bank it was found that the petitioner was intentionally and grossly negligence in handling an important paper obtained by the Officer of the Bank and falsely invented a loss theory in which only the letter was lost whereas the village-wise Advance Register of the Bank was not lost and returned by the Petitioner after 3 days. The Petitioner availed loan in the Mahal Branch of this Respondent Bank on 13-10-1984 by giving a false declaration about his properties and business activities and by misrepresentation and cheating the institution to gain financially. The petitioner is not eligible to avail such loan. The petitioner confessed in his written explanation dated 26-9-1987 that he neither owned any properties nor he conducted any business for which he availed the loan. Therefore considering these two instances, and as this Respondent Bank is a Financial Institution, he has been asked not to work in the Respondent Bank as the Institution does not have confidence in him, in view of his attitude and conduct and the proven instances of cheating and negligence. The petitioner was disengaged with effect from 1-10-1987. It is further submitted that proved facts as admitted by the petitioner and in view of his confession letter dated 26-9-87, there is no need for any enquiry. The further allegation that the Petitioner was illegally terminated is incorrect. The petitioner is not entitled for reinstatement not for back wages as prayed for. In view of the above mentioned facts this Hon'ble Court may be pleased to dismiss the claim petition as the petitioner is not entitled either for reinstatement or for full back wages, or for continuity of service and all other ancillary and attendant benefits as prayed for.

4. The point for adjudication is whether the action of the Respondent-Bank in terminating the services of Sri B. Srinivasulu, ex-worker from 1-10-1987 is justified or not?

5. W.W.1 was examined on behalf of the Petitioner-workman and marked Exs. W1. M.W1 was examined on behalf of the Respondent-Bank and marked Exs. M1 to M5.

6. W.W1 is Sri B. Srinivasulu. In brief he deposed that he is the concerned workman in this case. He was appointed as Sweeper-cum-Messenger in the Respondent Bank by an appointment order in December, 1983. He was given appointment to join at Nandrakunta Branch. He was doing the work of sweeper and thereafter the work of messenger from 10 a.m. to 5 p.m. every day and he worked in that Branch for about 1½ years. Thereafter he was transferred to Akkurthy Branch. He worked in that Branch at Akkurthy for 1½ years. He was removed from service w.e.f. 1-10-1987. He worked continuously from the date of his appointment till he was removed from service till 1-10-1987. He was not given any notice before he was removed from service and no enquiry was conducted against him for any misconduct before he was removed from service. He was not paid one month's salary in lieu of notice nor he was paid any retrenchment compensation by the Respondent at the time of removing him from service. After he was removed from service, he approached the Chairman of the Respondent Bank requested him to reinstate him into service and he told him that it is not possible to reinstate him into service. He prays to the Court to pass an award to set aside the action of the Respondent in terminating his services and to direct the respondent to reinstate him into service with full back wages, continuity of service and all other attendant benefits.

7. M.W1 is M. Jayaram Naik. In brief he deposed that the workman in dispute was not appointed by the Bank in regular recruitment process as sweeper-cum-messenger. Mr. V. Srinivasulu was engaged casually in Eguva Veedhi Village Branch by the Branch Manager for casual work for some time. He was engaged on daily wage basis the day he was engaged he was paid the wage. Srinivasulu was engaged for sweeping, shifting and rearranging of the files per day some times for one hour work he was called. Their Manager was newly recruited and posted at Eguva Veedhi Branch and to have acquaintance locally area of the village to interest the public they engaged casual C. Srinivasulu. So Srinivasulu some times assist field officer for identify. Even for these jobs their Bank used to take his assistance whenever bank engaged him once for day. The Bank constitutes committee oral interview takes place basing upon the merit marks and the candidates will be selected. Srinivasulu availed loan from Mahal Branch and as a Loanee when he worked as casual at Eguva Veedhi Branch and Eguva Veedhi Branch was not aware of about this transaction. Srinivasulu applied for loan for retail trade. Ex. M1 is the loan application of their Bank issued by the Mahal Branch. He was sanctioned a loan of Rs. 1,000.00. Srinivasulu at the time of taking loan declare that he is having lands at Thimuapuram village. After enquiry Bank came to know that Srinivasulu submitted some forgery documents and availed the loan. Under Exs. M4 and M5 Srinivasulu admitted about the loan taking and also about the wrong statement and documents given and refunded the loan at the time of his admissions under Ex. M4 and M5 he was working as casual in Eguva Veedhi Branch. The allegation of Srinivasulu that he worked from 1983 to 1987 continuously Sweeper-cum-Messenger is not correct and that they have terminated orally is also not correct. Only way he is casual one.

8. In this dispute the allegation of the Petitioner-workman that he was appointed as Sweeper-cum-Messenger in the Respondent Bank on 8-12-1983 that after he worked for about

four years continuously without any break or interruption, his services were terminated w.e.f. 1-10-1987 without any enquiry or prior notice, that aggrieved by the illegal termination of the services, the petitioner workman approached the Labour authorities and also the Union also submitted representation to the R.L.C. (Central), Hyderabad and to A.L.C. (Central), Vijayawada that the termination of the services of the workman is illegal and violative of Section 25F of the I.D. Act.

9. The contention of the Respondent-Bank is the petitioner-workman worked for about four years continuously without any break or interruption is not correct as he was not employed on holidays and Sundays and no wages were paid for those days, that the allegation that the termination is in utter violation of the provisions of I.D. Act is not correct, that the petitioner was engaged purely as Part-time temporary daily wage sweeper in the Eguva Veedhi Branch of this Respondent Bank, the story of the petitioner regarding the loss of the letter alone, was rightly disbelieved by the Staff under whom the petitioner was working and the Stage of this Respondent Bank reported that if the petitioner is to continue to work as Temporary Part time daily wage sweeper at the said branch, their efforts to detect to the cases of loan amounts, forgery, cheating etc., would be affected. Falsely invented a loss theory in which only the letter was lost where as the Village-wise Advance Register of the Bank was not lost and returned by the Petitioner after 3 days.

10. At the very outset it is seen that the Petitioner-workman has worked in the Respondent Bank for about four years. The contention of the Petitioner-workman that his services were terminated with effect from 1-10-1987 without any enquiry or prior notice which is in utter violation of the provisions of the Industrial Disputes Act. On the other hand the statement of the Respondent that the petitioner workman has to be terminated only after enquiry and with prior notice is not correct. Whenever any employee is terminated, he should be enquired into with the charges so framed for misconduct and prior notice has to be served on the delinquent if he has committed any misconduct whether temporary or permanent employee. Here in this case no enquiry has been conducted and no prior notice has been served on the employee and thus violated the provisions of the Industrial Disputes Act, 1947. Hence I find that the action of termination of the services of the workman is highly arbitrary and illegal and violative of section 25F of the I.D. Act and against the principles of natural justice and that the Petitioner-workman is liable to be reinstated into service.

11. In the result, the action of the Management of Sri Venkateswara Garamcena Bank, Chittoor in terminating the services of Sri B. Srinivasulu, ex-worker from 1-10-1987 is not justified. The workman concerned is entitled to be reinstated into service with full back wages, continuity of services and all other ancillary and attendant benefits.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 28th day of March, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I
Appendix of Evidence

Witnesses Examined for Petitioner/Workman :	Witnesses Examined for Respondent/Management :
W.W1 B. Srinivasulu	M.W1 M. Jayaram Naik.

Documents marked for the Petitioner/Workman:

Ex. W1

Xerox copy of the complaint given by the
3-11-87 Petitioner to the ALC, Vijayawada.

Documents marked for the Respondent/Management :

- Ex.M1 Application for loan in the proforma in Telugu of Mahal Branch of Sri Venkateswara Gramens Bank.
 Ex.M2 Promissory Note given by the Petitioner Sri. B. Srinivasulu for Rs. 1000/-
 Ex.M3 Loan Agreement entered between Sri B. Srinivasulu and Mahal Branch.
 Ex.M4 Telugu Statement of B. Srinivasulu.
 Ex.M5 Do-

AWARD

The Government of India, Ministry of Labour, by its Order No. L-12012/133/89-I.R.(B.3) dt. 11-8-1989 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the Management of State Bank of Hyderabad and their workmen to this Tribunal for adjudication:

"Whether the action of the State Bank of Hyderabad, Region IV, Zonal Office, Nakkalagutta, Warangal (A.P.) in dismissing Sri B. Murali, Clerk-cum-Cashier from services by an order dt. 26-5-1988 is justified? If not, to what relief the workmen concerned is entitled to?"

This reference was registered as Industrial Dispute No. 57 of 1989 and notices were issued to both the Parties.

2. The brief facts of the claim statement filed by the workman is read as follows:--

The Petitioner was appointed in State Bank of Hyderabad service initially as Peon w.e.f. 11-12-1963, he was promoted to the post of Head Peon in 1970 and later promoted as Cashier-cum-Clerk w.e.f. 1-6-1978. On 13-2-1986 the Petitioner was deputed to Peddapalli Branch of State Bank of Hyderabad in connection with the remittance of cash. The petitioner when returned was informed by his Colleagues that some complaints were lodged by some persons for receiving cash bundles having checked or counter-checked by the petitioner. The petitioner was further blamed by the Branch Manager and the colleagues that the petitioner was only responsible for shortage. The petitioner was threatened further that he would be handed over to Police immediately. The Branch Manager further impressed that if the petitioner signs on the letter which he told that there was nothing adverse in the letter and it is not for initiating any action and only for the eye wash of complainants. Lost his balance of his mind and the signature was obtained on the said letter by the Branch Manager and colleagues exploiting the above prevailing situation and state of mind of the petitioner. The petitioner was served with an order of suspension dt. 27-2-1986 and there after a show cause notice dt. 25-3-1986. The petitioner in his explanation dt. 21-5-1986 to the show cause notice categorically denied charges and explained the above mentioned circumstances which reveals that it was a preplanned drama, conspired behind the back of the petitioner, in which the petitioner was made a pail. The petitioner in his explanation that signatures on the alleged confession letter was obtained keeping the petitioner in dark about the contents of the letter. The colleagues exploiting the above circumstances obtained the signatures of the petitioner on the letter, the contents of which could only be guessed by the petitioner only when he received the order of the suspension and realised that he was cheated. The petitioner in his explanation further pointed out that the main points which apparently and clinchingly establishes as how the fraud was played and how the petitioner was made a scape goat and the petitioner therefore requested to drop further proceedings against him and to proceed against the actual culprits. The findings of the Enquiry Officer are also perverse and therefore the enquiry so conducted is full of infirmities which deprived the petitioner to defend and contest the case for a fair and proper findings. That the punishing authority did not apply his mind to take an independent conclusion but merely followed the enquiry findings. The order of dismissal from service dt. 26-5-1988 is arbitrary and liable to be set aside. It is respectfully submitted that the petitioner is a poor from Backward Com-

नई दिल्ली, 3 मई, 1994

का. मा. 1209.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ हैदराबाद के प्रबन्धनत्व के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-4-94 को प्राप्त हुआ था।

[संख्या एल 12012/133/89-आई आर (बी 3)/बी I]

एस०एस०के० राव, डेस्क अधिकारी

New Delhi, the 3rd May, 1994

S.O. 1209:—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Hyderabad and their workmen, which was received by the Central Government on the 29-4-1994.

[No. L—12012/133/89-IR (B.3)/B.I.]

S.S.K. RAO, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

Present:— Sri Y. Venkatachalam, M.A., B.L.,
Industrial Tribunal-I.

Dated, 31st day of March, 1994

INDUSTRIAL DISPUTE NO. 57 OF 1989

Between:

B. Murali.

—PETITIONER

AND

The Regional Manager,
State Bank of Hyderabad,
Region IV Zonal Offices,
Warangal and another.

—RESPONDENT

Appearances :—

M/s. M. Ganga Rao, Advocate for the Petitioner.

M/s. K. Srinivasa Murthy, G. Sudha and V. Usha Rani, Advocates for the Respondent.

munity and having crossed the age could not secure any alternative employment and spending starving days and undergoing lot of mental torture. The petitioner therefore prays that this Hon'ble Court may be pleased to set aside the order of removal and direct the Respondents to reinstate the petitioner into service with all attendant benefits and back wages.

3. The brief facts of the counter filed by the Respondent read as follows :—

It is true that petitioner was appointed as Peon w.e.f. 11-12-1968. It is true that on 13-2-1986 the Petitioner was deputed to Peddapalli Branch for remittance of cash. On the said date the Respondent Bank Branch Manager received complaints from some customers and also from some other parties who received the cash from the cashier, petitioner herein, that there was shortage in the currency packets checked and counter checked given to them. As the customers brought currency packets, the Branch Manager received the complaint and checked them in the presence of customers and other staff members and immediately after this petition came from Peddapalli, these facts were explained to him by the Branch Manager and other colleagues about the shortage in the packets. It is this petitioner who has checked the cash, made the packets and also initialled on the packets. That was the reason he was questioned by the Branch Manager how cash shortage has occurred. It is true in view of complaints given and also the reports received from the Branch Manager the Petitioner was suspended on 27-2-1986 and show cause memo was issued on 25-4-1986. The petitioner has submitted explanation on 21-5-1986. As management was not satisfied with the explanation given initiated disciplinary action by letter dt. 11-10-1986 which is the charge sheet as well as the appointment of the enquiry officers. The further allegation that the signature on the confession letter was obtained keeping the petitioner in dark about the contents of the letter is not correct. It may be noticed having taken into account all the circumstances and facts only the disciplinary authority appointed Sri Y. Venkateswara Rao, Branch Manager of ADB Peddapalli Branches Enquiry Officer as per the procedure laid down in the Bipartite Settlements. This Hon'ble Court may be pleased to read the entire enquiry report and findings of Enquiry Officer as part and parcel of this counter. The allegation that the punishing authority did not apply his mind to take an independent conclusion, but merely followed the enquiry findings is not correct. The order of dismissal passed by the Management is valid and binding. The allegation the confession letter was obtained under duress and coercion from the petitioner by threatening and by creating confusive circumstances is totally false. The allegation the confession letter cannot stand as a reliable documentary evidence in the eye of law is not correct and the petitioner is put to strict proof of the same. The allegation that the statement showing about the shortage does not bear the signature of this petitioner and there is no evidence regarding the adjustment of the alleged shortage by the petitioner except the confession note is not correct. It is a case whether after all cashiers checked and initialled and countersigned by the cashier (shroff), from the fulfilled packets the denominations were removed. The allegation that on the reverse of the 18 slips the Branch Manager and all other staff only signed except the petitioner and that fact establishes that all the proceedings were done behind the back of the Petitioner is not correct. The allegation that there is no legal value for the evidence given as the Branch Manager and other staff who counted the bundles gave the statement were none other than those who counted the bundles alleged to have less number of pieces either first time or second time and as such it cannot be relied

upon is not correct. That the Respondent No. 2 has rejected procedural aspects brought to his notice which are to be scrupulously followed is not correct. There is escapism by leaping over by throwing the burden again on the petitioner is not correct and this allegation is totally false. The allegation the Appellate Authority i.e. Zonal Manager, apparently predecided to support his interested persons out of the way is not correct. The allegation on the duty days as Head Cashier and the days of pilferage does not tally and therefore the documents were not marked with an intention to suppress the facts is not correct. The allegation that there is a gang they were successful in throwing the blame on the innocent petitioner is totally false. It is also well settled law where misappropriation is done by an employee they will be left with no other alternative except to dismiss the employee. As such the allegation punishment is shockingly disproportionate is not correct. In view of the abovementioned facts this Hon'ble Court may be pleased to hold the action taken by Respondent management is correct and the dismissal order is valid and the petitioner is not entitled for reinstatement into service with all attendant benefits and back wages as prayed for as such dismiss the case of the petitioner.

4. The point for adjudication is whether the action of the Respondent Bank in dismissing Sri B. Murali, Clerk-cum-Cashier from service by an order dt. 26-5-1988 is justified or not?

5. M.W1 was examined on behalf of the Respondent Bank and marked Exs. M1 to M16. No oral evidence has been adduced on behalf of the Petitioner-Workman but marked Exs. W1 to W5.

6. Before going into the merits of the case, this Tribunal had decided the validity of the domestic enquiry conducted by the Respondent-Bank. On 15-3-1994 this Tribunal passed the Order holding that the domestic enquiry conducted in this case is not vitiated for any reason.

7. Now only the point this Tribunal has to decide whether the dismissal of the Petitioner-workman is shockingly disproportionate to the gravity of the misconduct committed by the Petitioner-Workman.

8. It is seen that the Petitioner-workman had initially confessed his guilt and requested the Management to pardon the mistake on the ground that he had misappropriated Rs. 7,760.00 by taking Rs. 50.00 and Rs. 20.00 denominations from the checked and counter-checked currency packets for his urgent domestic needs. The allegation made in the claim statement of the Petitioner-workman that the colleagues exploiting the circumstances obtained the signatures of the petitioner on the letter, the contents of which could only be guessed by the Petitioner only when he received the order of the suspension and realised that he was a cheated. Further it is mentioned that the grounds and explanations submitted by the Petitioner in his explanation were left unconsidered and the punishing authority proceeded to conduct enquiry. Be that whatever it may, the petitioner has committed misconduct by misappropriating an amount of Rs. 7,760.00. The petitioner is from a backward community and has crossed the age wherein he could not secure any alternative employment and that the Respondent-Bank failed to take the service and gravity of the alleged misconduct into consideration while deciding the punishment and the punishment as imposed is shockingly disproportionate to the gravity of the misconduct. So the punishment awarded to the petitioner in dismissing him from service is not in consonance with the gravity of the mis-

conduct committed by him. Hence I find that reinstatement into service without back wages and all other benefits will meet the ends of justice.

9. In the result, the action of the State Bank of Hyderabad, Region IV, Zonal Office, Nakkalagutta, Warangal(A.P.) in dismissing Sri B. Murali, Clerk-cm -Cashier-from services by an order dt. 25-6-1988 is not justified. Sri B. Murali is entitled to be reinstated into service without backwages and all other attendant benefits.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 31st day of March, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I.

Appendix of Evidence.

Witnesses Examined for the Petitioner—Workman :

Witnesses Examined on behalf of the Respondent—

Management ;

— M. W-1 Y. Venkateswara Rao.

Document marked for the Respondent—Management :

Ex. M1/13-10-86.—Appointment order of the Enquiry Officer disciplinary action proceedings against B. Murali.

Ex. M2/25-4-86.—Office copy of the show cause notice issued to the petitioner by the Bank.

Ex. M3/21-5-86.—Copy of explanation submitted by the Petitioner.

Ex. M4/11-10-86.—Charge sheet issued to Petitioner by the Bank.

Ex. M5/—O. C. of enquiry notice.

Ex. M6/—O. C. of enquiry notice.

Ex. M7/13-2-86.—Complaint given to the Branch Manager, S.B.H. Manthani by Head Cashier and others.

Ex. M/8.—List of the counter notice.

Ex. M/9.—Complaint given by Y. Ramakrishnaiah to the Manager, S.B.H. Manthani.

Ex. M-10.—Complaint given by A. Sriraniulu to the Branch Manager, S.B.H.

Ex. M/11.—Complaint given by K. Chantiah to the Branch Manager, S.B.H. Manthani.

Ex. M12/13-2-86.—Letter given by B. Murali to the Branch Manager, S.B.H. Manthani.

Ex. M13/13-2-86.—Xerox copy of promissory note given to Shri V. Ramulu.

Ex. M-14.—Enquiry Proceedings (Register).

Ex. M-15.—Enquiry Report.

Ex. M16/26/5/85.—Disciplinary Proceedings against B. Murali by the Disciplinary Authority by Regional Manager.

Documents marked for Workman :

Ex. W1/3-2-87.—Application submitted by the defence counsel of Shri Murali calling for certain records.

Ex. W-2.—Application submitted to Enquiry Officer by the Petitioner.

Ex. W3/17/25-1-87.—Letter submitted by the defence counsel of petitioner to the Enquiry Officer.

Ex. W4/21-4-87.—Letter reply given by Y. Venkateswara Rao E.O. to A. Udayashankar defence counsel of the petitioner.

Ex. W5.—Letter given by Ceferce Counsel to the DC.

नई दिल्ली, 3 मई, 1994

का. आ. 1210.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीजापुर ग्रामीण बैंक, बीजापुर के प्रबन्धन के संबंध में निदेशों और उनके कर्मचारियों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-4-94 को प्राप्त हुआ था।

[संख्या एल 12012/1/89-आई आर (बी I)]

एस. एस. के. राव, डेस्क अधिकारी

New Delhi, the 3rd May, 1994

S.O. 1210.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bijapur Gramena Bank, Bijapur and their workmen, which was received by the Central Government on 18-4-1994.

[No. L-12012/1/89-IR(B. I)]

S. S. K. RAO, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated, this 12th day of March, 1994

PRESENT :

Sri M. B. Vishwanath, B.Sc., B.L., Presiding Officer.

CENTRAL REFERENCE NO. 40/89

I PARTY :

Sri Krishnaji,
S/o. Venkatesh Kulkarni,
C/o. Sri V. M. Katti,
Advocate,
No. 23, Tasabavadi Road,
Bijapur-586 101.

(By Sri V. M. Katti, Advocate).

vs.

II PARTY :

The Chairman,
Bijapur Gramena Bank,
Head Office,
Bijapur-586 101.

(By Sri R. Gururajan, Advocate).

AWARD

In this reference made by the Hon'ble Central Govt. by its order No. L-12012/1/89-IR(B-I) dated 24-5-1989 under Section 10(2A)(1)(d) of the I.D. Act the point for adjudication as per schedule to reference is :—

“Whether the action of the management of Bijapur Gramena Bank, Bijapur in terminating the services of Sri Krishnaji, Sweeper without notice or holding an enquiry is justified? If not, to what relief the workman is entitled?”

2. I will presently show that it should have been ‘Attendar’ in place of ‘Sweeper’ in the schedule to reference. Hon'ble Ministry obviously committed a bonafide mistake.

3. In the claim statement it is stated :—

The I party was appointed by the II party on 23-3-1983. The I party has worked continuously for more than 240 days (281 days). The I party has worked for 281 days continuously. Without holding any enquiry and without any reason or issuing any notice, the II party terminated the services of I party w.e.f. 28-12-1983.

4. In the objections statement it is stated :—

It is not true that I party has worked continuously for more than 240 days. There was no vacancy of attendar. No letter of appointment has been issued to I party. The I party was used to do job for a period. The I party was paid wages daily. He was working on a stop-gap arrangement. The I party was not an employee of the bank. The I party was engaged to sweep the bank premises purely on humanitarian ground. There was no vacancy in the bank of a sweeper. The I party is not entitled to any relief. The reference has to be rejected.

5. The case was posted at Hubli camp on 25-9-92. On that day the II party's advocate and its Chairman had sent telegrams praying for adjournment. This prayer was opposed by the counsel for the I party. So the case was adjourned on payment of cost of Rs. 150.

6. The case was again taken up at Hubli camp on 6-4-94. Even on 6-4-94 the II party and its counsel were absent. Costs of Rs. 150 levied earlier was not paid by II party to I party. Counsel for the I party opposed adjournment. So the case of the II party was taken closed and was posted for I party's evidence on 8-4-94 at Hubli. Later in the day on 6-4-94 telegrams were received from II party and its counsel praying for time.

7. Since the case had been posted for I party's evidence on 8-4-94 the case was taken up on 8-4-94 for I party's evidence. The I party and his counsel had come from Bijapur and they opposed adjournment, rightly. This Tribunal in a brief order rejected the prayer of II party and its counsel through telegrams, for adjournment. II party's case was taken closed. The I party got himself examined and closed his case.

Arguments of the Learned counsel for the I party were heard.

8. In respect of the present dispute, earlier there was reference in No. 108/84 pending before the Labour Court, Hubli. The II party filed a memo in this reference 108/84 objecting to the jurisdiction of the Labour Court, Hubli. Thereupon the I party withdrew the case and made a representation to the A.L.C. Bellary. That's how this reference has come to be made to this Tribunal by the Hon'ble Central Government.

9. It is clear from the records of Ref. No. 108/84 before the Labour Court, Hubli, that I party was described as an attendar in the point of dispute. The I party has summoned cheques Exs. W. 5 to W. 15 from the Syndicate Bank. These cheques were the cheques of the II party drawn on the Syndicate Bank. The I party was deputed to encash these cheques on behalf of the II party. In all these cheques the I party has been described as attendar on the reverse of each cheque.

10. The I party has sent a registered letter as per Ex. W. I praying the Hon'ble Ministry of Labour that the reference should be corrected describing I party as an attendar. The Hon'ble Ministry has not replied to the letter of I party.

11. There can be no doubt that I party was an attendar. In his evidence before this Tribunal I party has stated that the II party's Chairman appointed him orally and he has worked continuously in a clear vacancy from 23-3-83 to 23-12-83. This comes to 281 days. The II party in its counter statement has denied that the I party has worked for 240 days continuously.

12. As could be seen from the order sheet dated 17-7-91 the I party has filed I.A.I dated 16-1-91 praying for direction to the II party to produce the muster roll and postal ledger of the II party's head office from 23-3-83 to 28-12-83. The Officer on behalf of the II party has submitted that I.A.I might be allowed. So I.A.I has been allowed directing the II party to produce the muster roll and postal ledger. But the II party has not cared to produce the muster roll and the postal ledger to show that the I party has not worked continuously for more than 240 days. There is nothing to dis-believe the evidence of I party W.W. 1 that he has worked continuously for more than 240 days.

13. For the aforesaid reasons I hold that the I party workman has worked continuously for more than 240 days. The II party has not issued to I party any notice of termination. The II party has not held any enquiry against the I party. The II party has not paid any compensation to I party. The II party has not complied with the conditions precedent for retrenchment contemplated under Sec. 25F of the I.D. Act. So the I party is entitled to reinstatement.

14. There is inordinate delay in the reference being made to this Tribunal though the services of the I party were terminated in December, 1983. The II party is not to blame for this delay because I party was prosecuting the matter in a wrong forum. So I am of opinion that minimum backwages should be awarded in this reference.

ORDER

The oral order terminating the services of I party workman w.e.f. 28-12-83 is set aside. The II party is directed to reinstate the I party workman as an attender forthwith with continuity of service. The II party shall pay the I party 10 per cent of backwages from 28-12-83. Reference accepted as stated herein. Submit to Government.

(Dictated to Stenographer, typed by him, corrected, signed by me on this 12th day of April, 1994).

Sd./--

M. B. VISHWANATH, Presiding Officer.

नई दिल्ली, 3 मई, 1994

का. आ. 1211—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे, बम्बई के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27 अप्रैल, 1994 को प्राप्त हुआ था।

[संख्या एल-41012/11/92-आई आर (डी यू) (बी I)]

एस.एस.के.राव, डेस्क अधिकारी

New Delhi, the 3rd May, 1994

S.O. 1211.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 1, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Western Railway, Bombay and their workmen, which was received by the Central Government on 27-4-1994;

[No. L-41012/11/92-IR(DU)/B.I]

S. S. K. RAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, BOMBAY

PRESENT :

Shri Justice R. G. Sindhakar, Presiding Officer

Reference No. CGIT-56 of 1993

PARTIES :

Employers in relation to the management of
Western Railway, Bombay

AND

Their workmen

APPEARANCES :

For the Management.—Shri P. R. Pai, Advocate

For the workmen.— No appearance

INDUSTRY

: Railways

STATE

: Maharashtra

Bombay, dated the 22nd day of March, 1994

AWARD

The Government of India, Ministry of Labour, New Delhi by letter dated 2-9-1993, made the following reference to this Tribunal for adjudication under section 10(1)(d), read with section 2(A) of the Industrial Disputes Act, 1947.

“Whether the action of the management of Western Railway, Bombay in transferring Shri Abbas Ali, M.M.L., Driver Grade-II to the various departments is justified? If not, what relief he is entitled to?”

2. Notice of this reference was served both the parties, in spite of which, both the parties remained absent on 6-10-1993, the matter came to be adjourned to 2-12-1993, on which date again there was no appearance on either side. Thereafter, the matter came to be adjourned to 31-1-1994, when Shri P. R. Pai appeared on behalf of the Railways, however, there was no appearance on behalf of the workman, nor was any written statement filed by or on his behalf.

3. Even today (22-3-1994), when the matter came up before me, for hearing, there is no appearance on behalf of the workman, no statement of claim has been filed by the workman Shri Abbas Ali or on his behalf. It is therefore, not possible to adjudicate upon this dispute in the absence of any statement of claim filed by the concerned workman or on his behalf in support of the grievance made.

4. I have heard Shri P. R. Pai appearing on behalf of the Railway administrations. I find that it is the right of the Railway Administrations to transfer the services of its workmen from one department to the other in order to meet exigencies. I do not think any grievance could be made in that regard unless there is any mala fides in such transfers.

5. In the present case however, since the workman has failed to file any statement of claim in support of the dispute raised by him, it will not be possible to adjudicate upon the matter. In the circumstances, the action of the management will have to be held just and proper.

6. Reference is, therefore disposed of, award accordingly with no order as to costs.

R. G. SINDHAKAR, Presiding Officer

नई दिल्ली, 2 मई, 1994

का. आ. 1212—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विनावापनतम पोर्ट ट्रस्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण

हैदराबाद के पंचपट को प्रकाशित करती हैं जो केन्द्रीय सरकार को 29-4-94 को प्राप्त हुआ था।

[संख्या एल. 34011/11/85 डी आई वी (ए)]

बी.एम. डेविड, डेस्क अधिकारी

New Delhi, the 2nd May, 1994

S.O. 1212.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Visakhapatnam Port Trust and their workmen which was received by the Central Government on 2-9-94.

[No. L-34011/11/85-DIV(A)]

B. M. DAVID, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

Present :—

Sri Y. Venkatachalam, M.A., B.L.,
Industrial Tribunal-I.

Dated : 31st day of March, 1994

INDUSTRIAL DISPUTE NO. 8 OF 1992

Between :

The General Secretary, Port &
Dock Employees Association,
Rama Padma Nilayam, Dandu Bazar,
Visakhapatnam-530002. ... PETITIONER

AND

The Chairman,
Visakhapatnam Port Trust,
Visakhapatnam. ... Respondent

Appearances :—

S/Sri G. Bikshapathi, G. Vidyasagar, V. Vishwanatham, N. Vinesh Raj, G. Ravi Mohan and P. Giri Krishna, Advocates for the Petitioner.

M/s. K. Srinivasa Murthy, G. Sudha, P. V. K. Kishore Babu, Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-34011/11/85-DIV(A), dt. 20-2-1992 referred the following dispute under Section 10(1) (d) (2A) of the Industrial Disputes Act, 1947 between the Management of Visakhapatnam Port Trust, Visakhapatnam and their Workmen to this Tribunal for adjudication :

“Whether the action of the management of Visakhapatnam Port Trust in changing the service conditions of fourteen Assistant Foremen in Ore Handling Complex by effecting proposed change of allocation of

duties with effect from 9-12-1984 without following the provisions of Section 9A of I.D. Act, 1947 is justified?

If not, to what relief the workmen are entitled?”

This reference was registered as Industrial Disputes No. 8 of 1992 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner-Union read as follows :—In 1976 the Port official conducted work study in the complex on demand by the Union to post higher scale workers at Mechanical houses, as their duties and responsibilities are more onerous. The work study team recommended 58 posts of Operator Gr. II to be upgraded as Operator Grade I in the Mechanical Houses and other places. After necessary enquiry, the said Council recommended upgradation of posts. In pursuance of the recommendations the Visakhapatnam Port Trust issued order upgrading 35 posts of Operator Grade II as operator Grade I w.e.f. 1-3-1978. The Chief Mechanical Engineer issued promotion orders on 14-3-78 in respect of 35 operators. In the operation section the series at “R”, “S” and “H” play vital role in transportation of Ore. Again October, 1979 again the port upgraded 8 posts of Operator Grade II as Operator Grade I at H.2 and H.4. There are 12 houses from H.1 to H.10 including H.5A and H.7A. While the matter stood thus, contrary to the National Productivity Council recommendations and without any enquiry whatsoever, the Plant Superintendent (O/M) introduced altogether a new allocation for Asst. Foreman and Operator Grade I to be effect from 9-12-1984, the orders of new allocation were exhibited on notice board only on 5-12-1984, the said orders are illegal and they are being challenged in the High Court of Andhra Pradesh. It is submitted that contrary to the National Productivity Council recommendation, the Respondent Management introduced altogether a new allocation for Asst. Foreman and Operator Grade I to be effect from 9-12-1984. The orders of new allegation were exhibited on the notice board only on 9-12-1984. Aggrieved by the change of service conditions in violation of Section 9A of I.D. Act, the Petitioner Union raised the dispute before the Asst. Labour Commissioner (Central) Visakhapatnam on 7-12-1984. It is submitted that the Asst. Foreman were doing only supervising work earlier to December, 1984. The duties of Asst. Foreman were demarcated on the basis of Zonal system, namely West Zone, East Zone and Vulcanising system Zone. By the Notice dt. 5-12-1984 the Zonal system has been abolished and areawise allocation for the Area 1 to 9 were introduced. The regular Asst. Foreman who are supervisors are being asked to work in the houses which were hitherto manned and controlled by Operator Grade I and Grade II. With the result the Asst. Foreman apart from performing his normal supervision duties has to run the allotted house, thereby the duty is not only made impracticable but impossible. The allocation was aimed at reducing the strength of operators and to increase the workload to the Asst. Foreman. A chart showing the effect of strength vis-a-vis the abnormal increase of workload to the existing personnel is filed along with the claim statement. By the system, the Asst. Foreman were being asked to discharge the duties of Operators apart from their original duties. It is further submitted that as per the agreement in November, 1983 the Port

introduced a promotional scheme to eliminate stagnation persons in the Port from considerable time. As per the scheme the employees who had put in 10 years in the initial cadre and 8 years in the later cadre will be promoted to next higher cadres. The respondent refused to give the other benefits attached to the higher cadre except the scale. By the impugned order these persons who are holding higher posts by virtue of the stagnation agreement are now being asked to work as Asst. Foreman without giving regular promotion. Thus it is submitted that the service conditions of the Asst. Foreman and Operator Grade I were materially altered without any notice or opportunity. The said action is illegal and arbitrary. The Respondent management is trying to place heavy workload on the existing personnel and avoiding new recruitment and filling up existing posts. The Respondent management has also contravened the provisions of Section 9A of the I.D. Act which imposes prohibition of Management to change the service conditions arbitrarily without following the procedure under Section 9A. It is therefore prayed that the Hon'ble Tribunal may be pleased to hold that the action of the Visakhapatnam Port Trust in changing the service conditions of 14 Asst. Foremen of O.H.C. changing the allocation of duties w.e.f. 9-12-1984 as wholly illegal and unjustified and direct the Management to restore the allocation of duties which were existed prior to 9-12-1984 by reporting the Operators Grade I and Grade II in their respective places in O.H.C. and grant such other relief or reliefs.

3. The brief facts of the counter filed by the Respondent-Management read as follows :—It is submitted that wages of Class III and IV employees are regulated in terms of wages settlements reached between the Government of India, Ministry of Surface Transport and the five Federations of Port and Dock Workers. The current wage settlement was signed on 12-6-1989 and it is valid upto 31-12-1992. It is submitted that the statement of the petitioner Union relating to zones in operation section is totally incorrect. The correct position is that there are 14 Asst. Foreman (Operation) 3 of them are posted per shift to look after plant operations, 1st Asst. Foreman is asked to look after receiving system, the 2nd Asst. Foreman is asked to look after shipping system in West Zone and the 3rd Asst. Foreman is earmarked for shipping system in East Zone. Further one Asst. Foreman for each shift is posted to look after vulcanising work. The operators Grade-I and II are posted in the plant for operating the equipment, for monitoring the equipment and for vulcanising works. The duties and responsibilities of Operator Grade II/Grade I and Asst. Foreman mentioned in the claim statement are not true and correct. In these categories Operator Grade II is a Feeder post, which is to be filled by direct recruitment whereas all other posts are promotional posts i.e. more particularly upto Foreman. From year to year capacity of the Port has been increased. Presently there are three Zones at Ore Handling Complex, one is receiving zone where the ore comes and get stacked by tipplers from there it is transmitted mechanically means to stockyard which is called west zone, again from west zone the ore is transport mechanically on conveyor belt to shops which is called east zone. Basing upon the said recommendations and availability of vacancies and

identification only 35 posts of Grade II Operators were upgraded to Grade-I with effect from 1-3-1978. It is true that there are various places at various areas basing up on the need operators are posted either Grade I or Grade-II. The main duties of Operator Grade II are as follows :—

1. Belt Vulcanising.
2. Monitoring the belt operations at drive houses;
3. They also monitor tipplier operations when a Grade-II Operator is posted at receiving one.

and several other allied works will be carried out by Operator Grade-II. Operator Grade-I job is highly skilled than that of Operator Grade II. It is submitted that it is within the purview of the Port Management to conduct different work studies aiming at an effective utilisation of existing manpowers and redistribution of staff where they are found surplus by re-allocation. It is with this view the Port Trust entrusted work studies to National Productivity Council earlier and to the defends work study team in the year 1983. It is respectfully submitted that the allegation of duties which are connected to the particular job which are given time to time cannot be treated as change of service condition. The allegation that the Assistant Foreman and the Operator Grade-I were given new allocation is not correct. The Assistant Foreman and the Operator from 9-12-84 are discharging the duties and its alleged activities which are to be discharged by Asstt. Foreman and Operator Grade-I alone. So the question of the petitioner Union getting aggrieved with those duties allocated to them does not arise. It is submitted that the work entrusted to the Asstt. Foreman is only a normal work which can be effectively carried out by them as only smaller area was allotted to them. There is nothing impracticable for impossible in the duties assigned to the Asstt. Foreman (Operation). The new allocation is therefore not aimed at either reducing the strength of operators or to increase the workload of Asstt. Foreman as alleged. Of the 14 Asstt. Foreman (Operation) 3 of them were posted per shift to look after plant operations. It is submitted that no discrimination was shown between the regular employees in the cadre and those posted under upgraded scheme with regard to designation, status, scale of pay and other benefits of fixation of pay etc. to which regular promoted employees are entitled to. The allegation that service conditions of the Asstt. Foreman and Operators Grade-I are materially altered without any notice or principles is not correct and totally false. It is well settled principle of law that creation and abolition of posts is a managerial function and sanction should be given by the Government and the Courts or the Tribunals are not given powers to create posts. The reference is only with regard to notice under Section 9-A of the I.D. Act that is whether allocation of duties comes under change of service condition. It is submitted that the allegation of the Union that the workload of the Asstt. Foreman has increased on account of new allocation dated 6-12-84 is not correct. In fact the 14 Asstt. Foremen are performing supervisory duties along with other Asstt. Foreman. The reference as made is not maintainable

in law. So the question of changing the allocation of duties from 9-12-1984 to operators Grade I and Grade-II or for Asstt. Foreman does not arise. So question of re-posting these employees to their respective places also does not arise. There are no merits in the petitioner's case. In view of the above mentioned facts this Hon'ble Tribunal may be pleased to dismiss the claim petition and reject the reference.

4. The point for adjudication is whether the action of the Respondent-Management in changing the service conditions of fourteen Assistant Foreman in Ore Handling Complex by effecting proposed change of allocation of duties with effect from 9-12-1984 without following the provisions of Section 9A of the I.D. Act 1947 is justified?

5. W.W.1 is examined on behalf of the Petitioner and marked Exs. W1 to W12. MW1 and MW2 were examined on behalf of the Respondent-Management and marked Exs. M1 to M13 on its side.

6. WW1 is A. Rahman. In brief he deposed that he is the General Secretary of the Petitioner-Union. He is working as Operator Grade I in the Ore Handling Complex in Visakhapatnam Port Trust. The Union has espoused the present dispute. The Port Trust export the ore to Japan. The Ore Handling process continue, throughout day and throughout the year. The disputes pertains to operation section. 5 Categories of employees are working in the said Section viz., Operation Grade II, Operator I, Asstt. Foreman, Foreman and Asstt. Engineer. Ex. W2 is the duties of Operators posted at Mechanical House. The Mechanical Houses are manned by Operator Grade I. Ex. W3 is the xerox copy of allocation to Operator Grade I w.e.f. 3-6-1984. Ex. W4 is the allocation made to Asstt. Foreman w.e.f. 15-7-1984. With effect from 9-12-1984 Operators Grade I were removed from Mechanical Houses by proceedings dated 5-12-1984. In the place of Operator Grade I, Asstt. Foreman were assigned duties vide Ex. W6 w.e.f. 9-12-1984. Due to which the strength of the Operators Grade I are reduced in Ore Handling Complex and the work load is increased to Asstt. Foreman. The Asstt. Foreman were asked to perform the other duties apart from manning Mechanical houses. No prior notice was given to the workmen concerned or to the Union before changing allocations. The Management did not keep the proposed change in abeyance in pursuance of their representation. 16 Operators Grade I and 24 Operators Grade II have been reduced and they were posted to III Trippler which was commissioned in November 1984. No posts were created for operating III Trippler. Due to change of allocation of duties of Operators Grade I and Asstt. Foreman w.e.f. 19-12-1984 apart from dislocation to the Operators Grade I, there was a loss to the Port Trust. Due to lack of continuity of persons at Mechanical houses, there was damage to the equipments and conveyor belts. In spite of their representation, the Government of India did not take any steps to reduce the loss to the Port Trust. No investigation or enquiry was conducted in respect of the loss. The Union demands that allocation of duties with effect from 9-12-1984 is illegal and to restore the allocation of duties existed prior to 9-12-1984, by posting Operators Grade I and Grade II in their respective places.

7. MW1 is U. R. M. Raju. He deposed in brief that there are 11,000 employees in Visakhapatnam Port Trust. Normally for every six months, the management will change the allocation of duties to the staff pertaining to Ore Handling Complex. Total 65 Asstt. Foreman are working in Ore Handling Complex. Totally four work studies were made. I.D. No. 16 of 1992 is also identical in nature and connected to this I.D. No. 8 of 1992. The Asstt. Foreman post is supervisory post and he has to supervise all the persons posting under his control and to take care of the equipment and the area for which he was posted. The allocation of Asstt. Foreman was made on 9-12-1984 wherein the Asstt. Foreman were asked to man the houses also. Section 9A will not apply to the Visakhapatnam Port Trust. There was a ban in the year 1984 by the Central Government on recruitments. Ex. M1 is the allocation of duties. Ex. M2 is the xerox copy of the abstract of Section 9A.

8. MW2 is P. V. Muralimohan Rao. In brief he deposed that he is looking after Operation maintenance of the plant. The I.D. Nos. 8/92 and 16/92 are inter-related subject matter. The nature of duties performed by the Asstt. Foreman are to co-ordinate, working of operation of tripping and shipping system in the plant and also control the operation working in his area and recommend leave etc. He is supervising the work of supervisors as well as Operators. The Asstt. Foreman (OP) whose duties are not covered under the I.D. Act. The salaries drawn by the Asstt. Foreman is more than Rs. 5,000.00 per month. The allocation of duties does not come under the meaning of change of duty or change of service condition. There was no disciplinary action taken against these Asstt. Foreman for not attending the work. The supervisory are carrying the work for the co-ordination and observing the equipment conveyance system of the plant. Ex. M9 is the xerox copy of stagnation promotion for all Class III and Class IV workers have been given who complete 8 years service in November 1983 after discussion with all the recognised Unions. After attending the duty at the end of December 1984 they are also following the allocation like others. It was not correct to say that to avoid new recruitment existing personnel were burden with additional jobs. It is not correct to say that by non posting of Grade I Operator the mechanical drive houses have failures.

9. The issue in this dispute relates to change of service conditions vide notice dated 9-12-1984.

10. The Assistant Foreman who were incharge of their respective shifts were asked to work in Transfer Houses which are being looked after by the Operator Grade I and Operator Grade II. No notice was given to work in Transfer Houses which are manned by Operators Grade I and II. The impugned action amounts to change of service conditions and no prior notice was issued as per Section 9-A of the Industrial Disputes Act 1947. It is seen that Defence Work Study, National Productivity Report etc. did not recommend for posting of Assistant Foreman in Transfer Houses. Hence I find that there is no justification for posting Assistant Foreman in place of Operator Grade I and Operator Grade II posts. With regard to re-allocation of duties, instead of improving higher production resulted in negative result. Due

to re-allocation there were many breakdowns resulting in loss to machinery and transportation of raw materials causing heavy loss and payment of demurrages in foreign exchange. By introduction of re-allocation of duties, 12 Houses which were manned by 12 Operator Grade I and 6 Operator Grade II and 4 Assistant Foreman were replaced by only 12 Assistant Foremen thereby increased in the workload to Assistant Foremen who were asked to discharge normal duties in addition to manning Mechanical Houses and Transfer Houses. The effected persons by change of allocation of duties are referred to in Industrial Dispute No. 16 of 1992. They were not paid wages during the period of stay granted by the Hon'ble High Court of Andhra Pradesh. Therefore the Operators Grade I and Grade II are to be posted in their posts existing prior to 9-12-1984 as no notice under Section 9A of the I.D. Act was issued. Hence I find that changing the service conditions of 14 Assistant Foremen of Ore Handling Complex, changing the allocation of duties w.e.f. 9-12-1984 is wholly illegal and unjustified.

11. In the result, the action of the Management of the Visakhapatnam Port Trust in changing the service conditions of fourteen Assistant Foremen in Ore Handling Complex by effecting proposed change of allocation of duties with effect from 9-12-1984 without following the provisions of Section 9-A of I.D. Act, 1947 is not justified. The Respondent-Management is directed to restore the allocation of duties which were existed prior to 9-12-1984 by reposting the Operators Grade I and Grade II in their respective places in Ore Handling Complex.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of Tribunal, this the 31st day of March, 1994.

Y. VENKATACHALAM, Industrial Tribunal

Appendix of Evidence

Witnesses Examined for the Workmen :

WW1.—A. Rahman.

Witnesses Examined for the Management :

MW1.—U. R. M. Raju.

MW2.—P. V. Murali Mohana Rao.

Documents marked for the Petitioner/Workmen

Ex. W1.—Xerox copy of the layout of the Ore Handling Complex.

Ex. W2.—Duties of Operators Posted at Mechanical Houses.

Ex. W3.—Allocation of duties of Operator Grade I w.e.f. 3-6-1984 Xerox copy.

Ex. W4.—Allocation of duties of Assistant Foreman w.e.f. 15-7-1984 Xerox copy.

Ex. W5.—Allocation of duties of Assistant Foreman w.e.f. 9-12-1984.

Ex. W6.—Allocation of duties of Assistant Foreman w.e.f. 9-12-1984.

Ex. W7.—6-12-1984.—Representation made to the Management by the petitioner.

Ex. W8.—7-12-1984.—Representation made to the ALC(C)

Ex. W9.—2-2-1987.—Order copy in W.A 41/87.

Ex. W10.—29-12-1984.—Xerox copy of the minutes of Conciliation Proceedings dated 28 and 29, 1984.

Ex. W11.—25-6-1985.—Failure report of conciliation.

Ex. W12.—Representations to the Govt. of India as Chairman of Visakhapatnam Port Trust, about the damage to the Machinery belt etc. (consisting of 121).

Documents marked for the Respondent :

Ex. M1.—True copy of the allocation nature of duties and responsibilities of operation staff of O.H.C.

Ex. M2.—Xerox copy of the abstract of Section 9A of the I.D. Act, 1947.

Ex. M3.—Xerox copy allocation of Asstt. Foreman w.e.f. 15-7-1984 officer and supervisory.

Ex. M4.—Xerox copy of the allocation of Asstt. Foreman w.e.f. 9-12-1984 (Revised).

Ex. M5.—Xerox copy of Extract of Visakhapatnam Port Trust duties and Responsibilities of Foreman (OP) and Asstt. Foreman (OP.)

Ex. M6.—Xerox copy of Visakhapatnam Port Trust Documents of Operator Grade-I as Operator Grade-II.

Ex. M7.—Copy of W.P. No. 16311/84.

Ex. M8.—Copy of W.A. No. 1636/84.

Ex. M9.—Xerox copy of promotional opportunities to Class III and IV employees.

Ex. M10.—Xerox copy of the UP Gradations—OHC (Operation) Section.

Ex. M11.—Xerox copy of extract Defence work study report.

Ex. M12.—Xerox copy of Extract of N.P.C. Report.

Ex. M13.—Xerox copy of the Extract of Suman Committee Report.

नई दिल्ली, 2 मई, 1994

का आ. 1213—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विशाखापत्तनम पोर्ट ट्रस्ट के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनन्त में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29 अप्रैल 1994 को प्राप्त हुआ था।

[मं. एल-34011/12/85 डी IV (ए)]
डी.एम. डेविड, डेस्क अधिकारी

New Delhi, the 2nd May, 1994

S.O. 1213.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Visakhapatnam Port Trust and their workmen, which was received by the Central Government on 20-4-1994.

[No. L-34011/12/85-D.IV(A)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :—

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.

Dated : 31st day of March, 1994

INDUSTRIAL DISPUTE NO. 16 OF 1992

BETWEEN :

The General Secretary, Port & Dock Employees Association, Visakhapatnam. .. Petitioner

AND

The Chairman Visakhapatnam Port Trust, Visakhapatnam. ... Respondent

APPEARANCE :

M/s. G. Bikshapathy, G. Vidyasagar, V. Vishwanathan & N. Vinesh Raj, G. Ravi Mohan, Advocates for the Petitioner.

M/s. K. Srinivasa Murthy & G. Sudha, Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-34011/12/85-DIV(A), dt. 12-3-1992 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the Management of Visakhapatnam Port Trust and their Workmen to this Tribunal for adjudication :

"Whether the action of the management of Visakhapatnam Port Trust in insisting the workmen appended below to follow the new Roster with effect from 19-12-1984 without giving a notice under Section 9-A of I.D. Act, 1947 and also in refusing to pay the wages for the said period to the said workers is justified? If not, to what relief the workers are entitled?

LIST OF ASSISTANT FOREMEN :

S/Sri

1. G. Sivaram Babu.
2. M. Gavaraiah
3. N. Sanyasi Naidu

4. G. Ramamurthy
5. M. A. Mazced
6. G. Gopalakrishna
7. N. Nageswar Rao
8. Ch. Thatha Rao
9. N. H. Haque
10. N. Kameshwara Rao
11. K. Maria Das
12. K. V. Appalaraju
13. S. Appalanarasimham
14. V. Krishna Murthy

LIST OF UPGRADED ASST. FOREMAN

1. P. V. Subbarayadu
2. K. Venugopala Rao
3. M. Nageswar Rao
4. D. Venkata Rao
5. P. S. N. Murthy
6. K. Venkateswara Rao
7. A. L. Narayana Rao
8. V. Nandeswara Rao
9. P. Durgaprasada Rao.

This reference is registered as Industrial Dispute No. 16 of 1992 and notices were served on both the parties.

2. It is submitted that Visakhapatnam Port Trust has issued orders altering the service conditions of Assistant Foreman, Operator Grade I and Operator Grade II w.e.f. 9-12-1984 without following Section 9A of I.D. Act. With effect from 9-12-1984 the Asstt. Foreman who were supervising the Operators' working in Transfer Houses were required to man them by reallocating the Zones into Areas. The Union made representation dt. 7-12-1984 resisting change of service conditions. It is submitted that the Asstt. Foreman and Operators Grade I and II have resisted the change of service conditions which is in gross violation of Section 9-A of the I.D. Act. As the stay was granted by the Hon'ble High Court, the Management permitted the workmen to perform the duties as per the allocation of duties existing prior to 9-12-1984. Consequent on the vacation of stay by the Hon'ble High Court the workmen were not allowed to perform their duties w.e.f. 19-12-1984. They were not allowed to sign the muster nor was they allotted any work. They staked on till the duty hours and thereafter they left place. The number of days each workmen were not allowed to perform duties result in deduction of wages, is filed as annexure to the claim statement. The Union represented on 19-12-1984 to the Chairman, that the workmen were not allowed to sign the attendance register which amounts to illegal lock out in the Operations Section of Ore Handling complex. It is submitted that the action of the Respondent in altering the service conditions of the workmen without notice to individual workmen or to the Union is contrary to Section 9-A of the I.D. Act. The Management has also not given the 21 days prior notice as required under Law. It is submitted that the allocation charts are displayed once in a six months as per usual practice. But in the instant

case the management has changed the nature of duties performed by the Asst. Foremen. The 4 Zones were charged to 12 Arcas and the Asst. Foremen were asked to look after duties, hitherto performed by Operator Grade I/Grade II in Mechanical Houses and Transfer Towers. Hence the allocation of Duties w.e.f. 9-12-1984 cannot be equated to periodical allocation of duties and it is a clear violation of Section 9A of the I.D. Act. That due to illegal action of Management in not allowing the workmen to sign on attendance registers and not allowing them to perform their duties, the workmen cannot be denied their wages as they were at the disposal of the management during the respective shift hours. The action of the management amounts to illegal lockout and hence the Management is liable to pay the wages to the workmen concerned in the dispute. Therefore it is submitted that changing the service conditions without calling Section 9A is illegal and denying the payment of wages is wholly unjustified. That detailed claim statement has been filed in I.D. No. 8/92 in regard to violation of Section 9A. Hence the petitioner Union prays that the averments made in the said claim statement may be treated as part and parcel of the claim statement. Therefore, it is prayed that the Hon'ble Court may be pleased to declare the action of the Management under reference as illegal and unjustified and pass an award directing the management to pay wages to the workmen concerned in the dispute for the period from 19-12-1984 onwards as claimed the annexed statement with interest and grant reliefs as the Hon'ble Court may deem fit.

3. The brief facts of the counter filed by the Respondent-management, read as follows :—The Government also referred the dispute relating to change of allocations of duties to the 14 Asst. Foremen w.e.f. 9-12-1984 of the Ore Handling Complex which was registered as I.D. No. 8 of 1992 by the Hon'ble Tribunal. As the issues raised in the two I. Ds. have relation to each other, the counter filed by the Respondent in I.D. No. 8/92 may be read as part of this counter for adjudicating the dispute. It is submitted all the workmen in dispute i.e. list of Asst. Foremen and upgraded Asst. Foreman do not come within the definition of Section 2(s) of the I.D. Act. They are not workmen and they are in supervisory category and doing supervisor work as such when they are not workmen the question of adjudicating the dispute under Section 2(K) does not arise. The reference is not maintainable. It is submitted that change of allocation of work which is a regular and routine feature once in 6 months does not come under service condition hence Sec. 9-A has no application whatsoever. Change of allocation does not constitute a service condition. Even according to Section 9-A and Schedule 4 appended thereto, change of allocation of staff will not come under service condition. The petitioner Union raised a dispute regarding the change of allocation and also payment of wages for the period the workmen did not report for duty at the allocated places and the conciliation proceeding ended in failure. It is submitted when I.D. 8/92 is pending before this Hon'ble Court on the very same subject matter adjudicate is bad in law and reference on the same subject matter is not maintainable. The

employees referred to in the claim statement were not allowed to sign in the attendance register as they have not reported to the respective place of duty in respective shift as per new allocation of duties w.e.f. 9-12-1984 and in implemented w.e.f. 19-12-1984 i.e. soon after vacation of say order by the Hon'ble High Court. To make it more specific workmen who are allotted particular shift have not attended that shift but attended some othershift according to their own will and wish which is contrary to duties allocated to them. As per the allocation charge supervisors have not attended duties. It is submitted that applicability of Section 9-A of the I.D. Act and change of service conditions was already dealt with in para above. As stated earlier Section 9A is not applicable to the petitioner. It is not necessary for the management to issue 21 days notice as alleged. Action of the management is not illegal and Section 9-A does not attract to this case. The new allocation was made from 9-12-1984 in order to achieve optimum utilisation of staff and effective supervision of the operation of the OHC. It is submitted that Operator Grade II are allocated to look after the Conveyor system and equipments and the Operator Grade I were allocated at dry houses and equipments. Thus several Operators in Grade I and Grade II are working since long time and the promotion channel for Grade I Operator is Assistant Foreman (Operation) and for Operator Grade II is Operator Grade I. In view of the ban for creation of posts, promotions could not be released. It is submitted no illegal action has been done by the Management. It may be noticed even after allocation of duties some refused to perform and intentionally went to the duty spots and shifts where they were not allocated. So they were not allowed to sign in those Muster Registers. The management is justified in not making the payment of wages to these petitioner and the petition has been already explained in foregoing paragraphs. There are no merits in the petitioner's case and the petitioners are not entitled for claiming wages for the supervisors who have not followed the allocation during that period. The relief prayed is outside the scope of the reference. In view of the above, this Hon'ble Court may be pleased to dismiss the claim petition and reject the reference.

4. The point for adjudication is whether the action of the Respondent-Management in insisting the workmen appended below to follow the new Roster with effect from 19-12-1984 without giving a notice under Section 9A of the I.D. Act 1947 and also in refusing to pay the wages for the said period to the said workers is justified or not?

5. W.W1 was examined on behalf of the Petitioner-Union and marked Exs. W1 to W7. M.W1 and M.W2 were examined in I.D. No. 8 of 1992 are clubbed in this I.D. No. 16/92 since they are identical in nature as per Memo filed on 8-2-1994 in I.D. 8/92 and marked Exs. M1 to M2.

6. W.W1 is A. Rahman. In brief he deposed that he is the General Secretary of the Petitioner Union. He is working as Operator Grade-I in Ore Handling Complex in Visakhapatnam Port Trust. 5 categories of employees are working in the said Section viz., Operator Grade II, Operator Grade I, Asst. Foreman, Foreman and Asst. Engineers, Asst. Engineer is classi-

fied under Class II Officer and all others are Class II employee. With effect from 9-12-1984 operator Grade I were removed from Mechanical Houses and in their places Asst. Foreman were allotted duties due to which the strength of Operators Grade I reduced in Ore Handling Complex and work load of Asst. Foreman has been increased. The Asst. Foremen were asked to perform the duties of manning mechanical houses apart from their regular duties. No prior notice was given to the employees affected by changing the allocation. The Union made representations to the management and Asst. Labour Commissioner (Central) but the allocation of duties was not kept in abeyance. The Asst. Foreman and Operator Grade II have reported for duty from 9-12-1984 but they were not allowed to put their signatures in the muster. Therefore the Union made representation to the Chairman, Port Trust vide letter dt. 2-12-1984 Ex. W1 is the copy of the said representation to take necessary action. The Union vide Ex. W2 letter dt. 14-12-1984 requested the management to pay the salaries for the period from 9-12-1984 and 10-12-1984. However the salaries were not paid to the employees. On 5-6-1983 the management has changed the duties of Fitters working in maintenance Section and posted them to operation section. They have not followed the change of duties. During that period the management has not deducted the wages. Due to changing the allocation of duties 20 employees have lost their wages for the days mentioned in Ex. W7. The Union demands for payment of wages for the Asst. Foreman effected due to change of allocation in December, 1984.

7. M.W1 is U. R. M. Raju. He deposed in brief that there are 11,000 employees in Visakhapatnam Port Trust Normally for every six months, the management will change the allocation of duties to the staff pertaining to Ore Handling Complex. Total 65 Asst. Foremen are working in Ore Handling Complex. Totally four work studies were made. I. D. No. 8 of 1992 is also identical in nature and connected in this I.D. No. 16 of 1992. The Asst. Foreman post is supervisory post and he has to supervise all the persons posting under his control and to take care of the equipment and the area for which he was posted. The allocation of Asst. Foreman was made on 9-12-1984 wherein the Asst. Foremen were asked to man the houses also. Section 9A will not apply to the Visakhapatnam Port Trust. There was a ban in the year 1984 by the Central Government on recruitments. Ex. M1 is the allocation of duties. Ex. M2 is the xerox of the abstract of Section 9A.

8. M.W2 is P. V. Muralinohan Rao. In brief he deposed that he is looking after Operation maintenance of the plant. The I. D. Nos. 8/92 and 16/92 are inter-related subject matter. The nature of duties performed by the Asst. Foreman are to co-ordinate, working of operation of tipping and shipping system in the plant and also control the operation working in his area and recommend leave etc. He is supervising the work of supervisors as well as Operators. The Asst. Foreman (OP) whose duties are not covered under the I.D. Act. The salaries drawn by the Asst. Foreman is more than Rs. 5,000.00 per month. The allocation of duties does not come under the meaning of change of duty or change of service condition. There was no disciplinary action taken against these Asst. Foremen for not attending the

work. The supervisor's are carrying the work for the coordination and observing the equipment conveyance system of the Plant. Ex. M9 is the xerox copy of stagnation promotion for all Class III and Class IV workers have been given who complete 8 years service, in November, 1983 after discussion with all the recognised Unions. After attending the duty at the end of December, 1984 they are also following the allocation like others. It was not correct to say that to avoid new recruitment existing personnel were burdened with additional jobs. It is not correct to say that by non-posting of Grade I Operators the Mechanical driver houses have failures.

9. The issue in this dispute relates to follow the new Roster with effect from 19-12-1984 without giving a notice under Section 9A of the I.D. Act and also in reusing to pay the wages for the said period to the said workers.

10. The Assistant Foremen who were incharge of their respective shifts were asked to work in Transfer Houses which are being looked after by the Operator Grade I and Operator Grade II. No notice was given to work in Transfer Houses which are manned by Operators Grade I and II. The impugned action amounts to change of service conditions and no prior notice was issued as per Section 9-A of the I.D. Act. It is seen that Defence Work Study, National Productivity Report etc. did not recommend for posting of Assistant Foreman in Transfer houses. Hence I find that there is no justification for posting Assistant Foreman in place of Operator Grade I and Operator Grade II posts. With regard to re-allocation of duties, instead of improving higher production resulted in negative result. Due to re-allocation there were many break downs resulting in loss to machinery and transportation of raw materials causing heavy loss and payment of demurages in foreign exchange. By introduction of re-allocation of duties, 12 Houses which were manned by 12 Operator Grade I and 6 Operator Grade II and 4 Assistant Foreman were replaced at only 12 Assistant Foreman thereby increased in the workload to Assistant Foreman who were asked to discharge normal duties in addition to manning Mechanical Houses and Transfer houses. The effected persons by change of allocation of duties were referred to in Industrial Dispute No. 8/92. They were not paid wages during the period of stay granted by the Hon'ble High Court of Andhra Pradesh. Therefore the Operators Grade I and Grade II are to be posted in their posts existing prior to 9-12-1984 as no notice under Section 9A of the I.D. Act was issued. Hence I find that changing the service conditions of 14 Assistant Foremen of Ore Handling Complex, changing the allocation of duties w.e.f. 9-12-1984 is wholly illegal and unjustified. The action of the Management in not allowing the workmen to sign on attendance registers and not allowing them to perform their duties, the workmen cannot be denied their wages as they were at the disposal of the Management during the respective shift hours and the Management is liable to pay the wages to the workmen concerned in this dispute, for the period from 19-12-1984 onwards as claimed in the annexed statement.

11. In the result, the action of the Management of Visakhapatnam Port Trust in insisting the workmen appended below to follow the new Roster with effect from 19-12-1984 without giving a notice under section 9-A of the I.D. Act, 1947 and also in refusing to pay the wages for the said period to the said workers is not justified. The Respondent-Management is directed to pay wages to the workmen concerned in the dispute for the period from 19-12-1984 onwards as claimed in the annexed statement with interest at 12 per cent per annum.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 31st day of March 1994.

Y VENKATACHALAM, Industrial Tribunal-I.

Appendix of Evidence.

Witnesses Examined

For Workmen :

W.W1 A. Rehman.

Witnesses Examined

For Management :

(Common Evidence in I.D. 8/92)

M.W1 U. R. M. Raju.

M.W2 P. V. Murali Mohan Rao.

Documents marked for the Petitioner/Workmen :

Ex. W1 12-12-84.---Representation given by the Petitioner Union to the Management of Visakhapatnam Port Trust.

Ex. W2 14-12-84.---Representation by the Union requesting the Management to pay the salaries for the period from 9-12-84 and 10-12-94.

Ex. W3 19-12-84.---Representation to the A.I.C (C), Visakhapatnam reg. Illegal Lock Out at OHC by the Management.

Ex. W4.---Minutes of Conciliation.

Ex W5 25-6-85.---Conciliation---Failure Report.

Ex. W6 27-1-86.---Representation to the A.I.C (C), Reg. charge of service condition of O.H.C., Reg.

Ex. W7.---Statement showing the absents effect in Salary Bill D737(2 & O73502 in C/W allocation followed in the operators.

Documents marked for the Management :

(Common documents of I.D. 8/92)

Ex. M1.---True copy of the allocation. Nature of duties responsibilities of operation staff of O.H.C.

Ex. M2.---Xerox copy of the abstract of Sec. 9A of the I.D. Act, 1947.

नई दिल्ली, 6 मई, 1994

का० आ. 1214.---केन्द्रीय सरकार ने औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (क) के उपखण्ड (i) के अनुसरण में अम संवालय की तारीख 8 मई, 1992 की सरकारी अधिसूचना संख्या का आ. 1320 के तहत खनिज तेल (शुद्धित तेल), मोटर और विमानन स्प्रेड डीजल तेल, गिट्टी का तेल, ईंधन तेल, विविध हाईड्रोकार्बन तेल और उनके मिश्रणों, जिनके अंतर्गत संश्लिष्ट ईंधन, रेतक तेल और इसी प्रकार की वस्तुएं आती हैं, के विनिर्माण और उत्पादन में लगे उद्योग को (जिस इसके बाद उद्योग कहा गया है), उक्त उप खण्ड के प्रयोजनार्थ विनिर्दिष्ट किया गया था, जिसे औद्योगिक (विकास और धनियमन) अधिनियम, 1951 (1951 का 65) की धारा 2 के अधीन 21 जून, 1992 से दो वर्ष की अवधि के लिए नियंत्रित उद्योग के रूप में घोषित किया गया था,

और केन्द्रीय सरकार की राय है कि जनहित में यह आवश्यक है कि उक्त उद्योग को और दो वर्ष की अवधि तक नियंत्रित उद्योग के रूप में विनिर्दिष्ट करना जारी रखा जाये,

अतः अब औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (क) के उपखण्ड (i) के अनुसरण में केन्द्रीय सरकार उक्त उद्योग को 21 जून 1994 से और दो वर्ष की अवधि के लिए नियंत्रित उद्योग के रूप में विनिर्दिष्ट करती है।

[संख्या एस-11025/23/83 डी-1ए]

अभीष्ट धोष, संयुक्त सचिव

New Delhi, the 6th May, 1994

S. O. 1214.---Whereas by Government Notification in the Ministry of Labour No. S.O. 1320, dated the 8th May 1992 the Central Government had, in pursuance of sub-clause (i) of clause (a) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), specified for the purposes of that sub-clause, the industry engaged in the manufacture or production of mineral oil (crude oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydrocarbon oils and their blends including synthetic fuels, lubricating oils and the like (herein-after referred to as the said industry) which had been declared as a controlled industry under section 2 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), for a period of two years from the 21st June, 1993.

And whereas the Central Government is of the opinion that in the public interest it is necessary that the said industry be continued to be specified as a controlled industry for a further period of two years.

Now, therefore, in pursuance of sub-clause (i) of clause (a) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby specifies, for a further period of two years from the 21st June, 1994, the said industry as a controlled industry.

[File No. S-11025/23/83-D.I(A)]
ABHIJ GHOSH, Jt. Secy.

